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A married person will not be absolved from the bonds of matrimony by believing, even upon information apparently reliable that the marriage has been dissolved by death or divorce. Public policy forbids that the permanence of the marriage relation should depend upon anything so precarious as the mental state of one of the parties. This well established proposition of law was invoked by the Supreme Court of Nebraska in a peculiar case involving a prosecution for bigamy. Reynolds v. State, 78 N. W. Rep. 483. The court while admitting that there are cases which hold that an honest belief in the death of a former husband or wife, together with some reasonable ground for their believing it, is a defense to a prosecution for bigamy, but that if the doctrine of such cases is sound, which they refused to concede, it had no application to this case. While the court was undoubtedly correct in its interpretation of and conclusion as to the facts of the case before them, the proposition of law which they seemed inclined to repudiate is well founded and supported by the clear weight of authority.

The conclusion of the Supreme Court of Kansas, in the case of Anthony v. Norton, published in full in this issue, wherein they decide that in an action by a widowed mother for the seduction of her daughter, who has reached her majority, the common law rule, requiring the relation of master and servant is a legal fiction, and does not obtain in Kansas, under the Code of Civil Procedure, which abolishes all fictions of pleading, is questionable, to say the least. The substantial change in the character of the action by a parent for the seduction of a daughter, from the early common law is, as shown by the court, universally recognized. At common law the action was based upon the relation of master and servant and not upon that of parent and child. The extent of the recovery has been enlarged by the courts from the necessity of the case rather than from the principles which govern the action, until compensation is awarded to the parent as such for the shame and mortification which that wrong brings upon him and his family. No action could be maintained by the father for the injury in his parental capacity. But in the struggle between justice to the parent and the precedents in actions of this character the courts have clung to the latter and striven to attain the former until the anomaly has been produced of requiring the action to be prosecuted by the father for an injury inflicted upon him in his relation of master, and permitting a recovery in his relation of parent. The theory of an injury to the master is however pertinaciously retained as the essential basis of the father's action, but it is now little more than a legal fiction used as a peg to hang a substantial award of damages upon, as compensation not to the master but to the head of the family. It is a logical sequence from that state of the law that proof of the more nominal relation of master and servant should be sufficient to give the parent a footing in court to recover damages commensurate with the injury, and evidence of the slightest service will be held sufficient. This relaxation of the common law, however, has not been extended to the matter of pleading, and declarations in such actions must be framed on the theory of the relation of master and servant. Statutes have been enacted in some of the States, either giving the woman a right of action in her own name, or modifying the requisites of the common law right of action, to do away with the fiction of master and servant and give the parent, as such, a remedy, without the necessity of proving loss of service. In the absence of such statute, it would seem that the pleading must be in accord with the common law. There does not seem to be any statutes of that character in force in Kansas, and the court called attention to none. There is a statute of that State which makes the common law in force in Kansas, except as modified by constitutional law or statutory law, judicial decision, and the condition and wants of the people. The court, however, founds its departure from the common law rule upon the statute applicable to civil procedure which abolishes fictions of pleading; but it may properly be said that the rule abolished by the court is not a rule of pleading, but a rule of substantive right as much as any other rule of the common law. The decision is an example showing how far sentiment will often take the law from the moorings of reason, step by step, one departure following another.

NOTES OF IMPORTANT DECISIONS.

FEDERAL OFFENSE — SHIPPING LOTTERY TICKETS INTO A TERRITORY.—The United States Circuit Court for the Northern District of Illinois, in the case of United States *ex rel.* v. John C. Ames, construing the federal statute, holds that as a territory is not a State, shipping lottery tickets into a territory is not an offense under the federal statute. Judge Jenkins says: "We cannot enlarge the scope of a criminal statute to create an offense which congress has not created, because we see that the mischief is the same mischief that congress has sought to prevent otherwise, in respect to other geographical divisions of the Union." The court comes reluctantly to the conclusion that it would be judicial legislation to hold, in view of the decisions of the Supreme Court of the United States, this act as including the territories of the United States.

CONSTITUTIONAL LAW—MOBS AND RIOTS—MUNICIPAL LIABILITY.—The Supreme Court of Illinois, in the recent case of City of Chicago v. Manhattan Cement Co., 53 N. E. Rep. 68, passed upon the constitutionality of an act of that State making cities liable for property destroyed by mobs. The holding of the court accurately stated was that a statute making a city or county liable for property destroyed within it by a mob, without reference to its ability or exercise of diligence to prevent the destruction, is within the police power of the State; that indebtedness for "local or corporate purposes" is not imposed on a city against its consent by the legislature, in violation of Const. art. 9, §§ 9, 10, by Laws 1887, p. 237, making a municipality liable for property destroyed within it by a mob; and that such a statute does not violate Const. art. 9, § 12, providing that a municipality shall not be allowed to become indebted beyond 5 per cent. of the value of its taxable property; as, even if it created an indebtedness, which it does not, it cannot be assumed that the city's indebtedness would thus be made to exceed that amount. Similar statutes have been in force in England, as well as in several of the States in this country, for many years, and have uniformly been upheld by the courts. The constitutional right of legislatures to enact such laws, under our form of government, has been frequently challenged in courts of last resort, and our attention is called to no case denying that authority. The principle upon which these laws are held to be within the general scope of legislative power is stated in Allegheny Co. v. Gibson, 90 Pa. St. 397, as follows: Speaking of the course of the ancient English law of the subject, it is said: "Formerly, as we have seen, a person robbed had his remedy against any inhabitant of the hundred; that is to say, the inhabitants were jointly and severally liable. Then the law was so changed that damages recovered against an individual could be assessed against all the inhabitants, so as to compel contribution. Afterwards it was still further modified so as to give the right of action against the hundred. The principle upon which this legislation rested was that every political subdivision of the State should be responsible for the public peace and the preservation of private property, and that this end could be best subserved by making each individual member of the community surety for the good behavior of his neighbor and for that of each stranger temporarily sojourning among them. The effect was to make each citizen a detective, and on the alert to prevent, as well as to detect and punish, crime. * * * It was evidently a police regulation, based upon grounds of public policy, and in force without regard to the hardships of particular cases." And referring to the Pennsylvania act, which is very similar to that under consideration, it is further said: "Our act of 1841 is also a police regulation, and rests upon like grounds of public policy. Under our political system, the State grants a portion of its sovereignty to certain municipalities. It clothes them with certain of its powers, and exacts from them, in return, the performance of certain duties. Among the powers granted is that of maintaining a police force. Among the duties exacted is that of preserving the public peace. There is an implied contract between the State and every municipality upon which it bestows a portion of its sovereignty that such municipality shall preserve the public peace and maintain good order within its borders. The State lends its aid when the local authorities are overborne and a call for assistance is made in the manner pointed out by law. But it is entirely within the power of the sovereign to make such communities responsible for the preservation of order. The privileges conferred must be taken with such burdens as the lawmaking power chooses to annex thereto."

In Darlington v. City of New York, 31 N. Y. 164, the court of appeals, having under consideration the statute of that State, passed in 1855, making counties and cities liable for property destroyed in consequence of mobs, said: "It cannot be doubted but that the general purposes of the law are within the scope of legislative authority. The legislature has plenary power in respect to all subjects of civil government which they are not prohibited from exercising by the constitution of the United States or by some provision or arrangement of the constitution of this State. This act proposes to subject the people of the several local divisions of the State, consisting of counties and cities, to the payment of damages to property in consequence of any riot or mob within the county or city. The policy upon which the act is framed may be supposed to be to make good at the public expense the losses of those who may be so unfortunate as, without their own fault, to be injured in their property by acts of lawless violence of a particular kind which it is the general duty of the government to prevent; and further, and principally, we may suppose, to make it the interest of every person liable to contribute to the public ex-

pense to discourage lawlessness and violence, and maintain the empire of the laws established to preserve public quiet and social order. These ends are plainly within the purposes of civil government, and, indeed, it is to maintain them that governments are instituted, and the means provided by this act seem to be reasonably adapted to the purposes in view."

Except that of the State of Maryland, all of the statutes of this character, so far as we can ascertain, like our own, fix the liability of the municipality without reference to its ability or exercise of diligence to prevent the destruction, and that feature has not been considered, by any of the courts passing upon the question, as an objection to their validity. In Allegheny Co. v. Gibson, *supra*, it was said: "It may seem a harsh rule to hold a community responsible for the effects of mob violence, which, apparently, at least, they had no power to prevent, yet not more so than to hold every inhabitant of the English hundred liable for a robbery of which he knew nothing and had no means of arresting. In both cases, it is a police regulation. It is based upon the theory that, with proper vigilance, the act might and ought to have been prevented." The following authorities either directly pass upon and sustain like statutes, or recognize their validity and give force to them: 2 Dill. Mun. Corp. § 959; Davidson v. City of New York, 27 How. Prac. 342; Luke v. City of Brooklyn, 43 Barb. 54; *In re* Pennsylvania Hall, 5 Pa. St. 204; Underhill v. City of Manchester, 45 N. H. 214; Williams v. City of New Orleans, 23 La. Ann. 507; Chadbourne v. Town of Newcastle, 48 N. H. 196; City of Atchison v. Twine, 9 Kan. 350; Brightman v. Inhabitants of Bristol, 65 Me. 426; Clear Lake Waterworks Co. v. Lake Co., 45 Cal. 90.

In Marion Co. v. Lear, 108 Ill. 343, the question being as to the constitutionality of the statute requiring counties to pay sheriffs' fees in criminal cases where the defendants are acquitted, and to make up any deficiency in their salaries, we said, after holding that the passage of the law was an exercise of the police power (page 349): "Whether the burden of enforcing police regulations, in the absence of express constitutional restriction—and none such is here claimed—shall be borne by the State at large or be devolved upon the local municipality is a mere question of public policy, upon which the determination of the general assembly is conclusive. A county is a public corporation, which exists only for public purposes connected with the administration of the State government, and it and its revenues are alike, where no express constitutional restriction is found to the contrary, subject to legislative control." See also Harris v. Board, 105 Ill. 445.

Counsel for the city contended that in none of the authorities cited as upholding the constitutionality of these mob or riot statutes were constitutional provisions in force like those contained in our constitution of 1870. It is not and cannot be denied, says the Supreme Court of Illinois, that the legislature of this State has full power to enact all laws pertaining to the civil government of the State, not prohibited by the federal or State constitutions. The constitution itself confers that power, and, as said in Association v. Lounsbury, 21 Ill. 511 (speaking of the constitution of 1848, similar in that regard to our present constitution): "The general grant of legislative power found in the constitution confers upon the general assembly all legislative power, and authorizes the lawmakers to pass any laws and do any acts which are embraced in the broad and general word 'legislation,' as known and defined in the English language," etc. "The question of legislative power, and its extent, depends on the limitations contained in the constitution. When a State is created it is vested with complete sovereign power, unless restricted by constitutional limitation. By section 1, art. 4, of our constitution, full, unlimited, and uncontrolled legislative power is conferred and may be exercised, unless limited by other provisions of that instrument or by the federal constitution." Harris v. Board, *supra*.

RECEIVERSHIPS OF BUILDING AND LOAN ASSOCIATIONS.

Various causes are assigned for placing a building and loan association or society in the hands of a receiver, but without attempting to discuss the reasons necessitating such procedure, it will suffice to say that insolvency is the chief cause and it is the relation, therefore, of the receiver to the creditors and stockholders of an insolvent association that we propose to examine.

The appointment of a receiver for the purpose of winding up a building and loan association puts an end to its active corporate existence and places upon the shoulders of the receiver the duty to collect and distribute the assets. The dissolution, strictly speaking, terminates the liability of the members to continue the prescribed regular stock payments or dues, and this applies to the borrowing as well as to the non-borrowing members.[1]

The reason for this is perfectly obvious, for the money if paid could not be used in the manner contemplated by the association and the stockholder alike, that is invested and reinvested for the benefit of the stockholder by means of the system peculiar to the building

[1] Endlich on Building & Loan Assns., sec. 523; Cason v. Seldner, 77 Va. 293; Himan v. Ryan, 3 Ohio (C. C.), 529; Cook v. Kent, 105 Mass. 246; Strohen v. Franklin Sav. Assn., 115 Pa. St. 273; Assn. No. 6 v. Zucker, 48 Md. 448.

and loan association scheme;[2] the dissolution of the association destroys that possibility.

The termination of the association's life also puts an end to the imposition of fines—which are a kind of liquidated damages necessary to the carrying out of the idea of strict mutuality upon which the plan of a building association is largely built.[3]

It naturally follows, then, that when dues (and premiums and interest, as we shall see later [4]) are no longer collectible, that fines, which are imposed for the infraction of the rules of the association, can no longer be imposed.[5] *Cessante ratione, cessat lex.*

The premium, which "is the *bonus* charged to a stockholder wishing to borrow for the privilege of anticipating the ultimate value of his stock by obtaining the immediate use of the money his stock will be worth at the winding up,"[6] is obtained by the association in one of two ways, namely, either upon the gross or installment plan. Under the gross premium plan the borrower agrees to relinquish a certain portion of his loan. To illustrate we shall suppose that the intending borrower has subscribed to five shares of stock having a par value of two hundred dollars each. He desires to make a loan of one thousand dollars. He bids twenty-five per centum premium,[7] gives a deed of trust on his property and further pledges his stock as additional security. The association then turns over to him seven hundred and fifty dollars, but the borrower pays interest on the one thousand dollars, and when his stock reaches par the association deducts from its value one thousand dollars and hands over to him the difference.

Under the installment premium plan the borrower agrees as in the above case to pay a certain premium on his loan, but instead of receiving the loan, less the premium agreed upon, he receives the full amount asked for and pays the premium in certain periodical sums, generally in the form of so much each month.

The position of the receiver when the gross plan is adopted, in regard to the payment of the premium, will be taken up later on when we come to the question of credits allowed borrowers on their loans;[8] but when the premium is paid on the installment plan and the association is dissolved, before it lives out its natural life, the question whether the receiver can demand payments of the premium arises.

The payment of the premium, in the first instance, is made on the basis of strict mutuality, and it is bearable only from the fact that the borrower has a long time in which to pay, and that his profits on his stock at the maturity of the association would reimburse him to a certain extent. Now when that mutuality is destroyed by the premature dissolution of the association his promise to pay the premium fails for want of consideration.[9]

This consideration consists mainly in the manner of payment that is in small monthly sums, to be invested by the association so as to reap a profit in which the borrower will share at the maturity of his stock, and so reduce the seeming great interest that he pays for the use of the money borrowed.

The receiver is appointed to wind up the association, not to prolong its life, consequently the payment of the premium, which forms an element only of the going, active concern, necessarily ceases when the association is dissolved.[10]

Before taking up the question of interest, which would seem to follow logically, I desire to show the position of the receiver in regard to loans made by the association to its members, or, in other words, to determine what is the receiver's duty when he is put in charge of an association that has various loans out standing due in six, twelve and, may be, eighteen months from the date of dissolution. Must he permit them to run their allotted time, or must he demand payment at once?

To permit the loans to run until the expiration of their time would be of no particular benefit to the borrower, and would delay the

[2] Waverly Mut. Bldg. Assn. v. Busk, 64 Md. 338.

[3] Thompson on Bldg. & Loan Assn., p. 99.

[4] See *post*, p.

[5] *In re* Estate of Houlette, 2 Chester County Rep. p. 11; Cook v. Kent, 105 Mass. 246; Assn. No. 6 v. Zucker, 48 Md. 448.

[6] Endlich on Bldg. & Loan Assns., sec. 339.

[7] Unless permitted by statute the rate of premium plus the rate of interest must not exceed the legal rate of interest, otherwise the transaction is deemed usurious. Hammerslough v. Kansas City B. & L. Assn., 79 Mo. 80; Brown v. Archer, 62 Mo. App. 277; Price v. Empire Loan Assn., 75 Mo. App. 551. In some jurisdictions the premium is considered as a thing apart from interest and so not within the usury laws. *Ex parte* Bath, 27 Chan. Div. 509; Sullivan v. Jackson B. & L. Assn., 70 Miss. 94; Latchford's Succession, 42 La. Ann. 529.

[8] See *infra*, p.

[9] Endlich on B. & L. Assns., sec. 523.

[10] Strohen v. Franklin Assn., 115 Pa. St. 273.

final settlement of the estate. At the end of the time during which the loan has to run, the borrower would have to meet it just the same, nor would he have his matured stock to set off against it owing to the dissolution of the association. Consequently, what at first seems a hardship, namely, that of compelling the borrower to pay up at once, is not in itself the hardship, but the loss to the borrower results from the dissolution of the association, and his consequent inability to receive the profits intended to make the burden of his loan comparatively light. And, further, it will be seen that if the loans were permitted to run on, the receiver would be continuing the association in part, instead of winding it up. As is said in Curtis v. The Granite State Prov. Assn.,[11] in answer to the same question: "It is now well settled that upon premature dissolution of an association of this kind, or upon its becoming insolvent and unable to carry out the purposes for which it was created and passing into the hands of a receiver for the purpose of having its affairs wound up, which is, in practical effect and operation, a dissolution, the borrowing member may be compelled to pay forthwith the balances due from them on their securities, although the latter in terms only provide for payment in installments extending over a definite period of time."[12]

It is the principle stated in the above case that should be enforced, but the writer does not contend that the principle should be literally and strictly enforced, for it is always hard and sometimes impossible for the borrower to repay his loan on a few days' notice, and, therefore, it seems that it should be left to the discretion of the receiver who, keeping the above stated principle in mind, can learn the circumstances of each individual case with which he has to deal, and thus place himself in a position to determine what is a reasonable time within which the borrower must liquidate his indebtedness.

The loan now due, it is necessary to look into what credits, if any, a borrowing stockholder is entitled to. The first question that arises is whether the borrower shall have the right to have his payments of dues or stock payments, as they are sometimes called, credited upon the amount of his loan.

[11] 36 Atl. Rep. 1023.
[12] 115 Pa. St. 273.

On this question the authorities are divided, but unjustly so, it seems, for the reasoning in the case of Strohen v. The Franklin Savings Association,[13] partakes of conclusiveness. In that case Mr. Justice Paxon says: "The insolvency of the company, as before observed, puts an end to its operation as a building and loan association; to a certain extent it also ends the contract between it and its members respectively, and nothing remains but to wind it up in such a manner as to do equity to creditors and between the members themselves. As regards the latter care should be taken to adjust the burdens equally, and not to throw upon either borrowers or non-borrowers more than their respective share. This result may be reached by requiring the borrower to repay what he has actually received with interest. He would then be entitled after the debts are paid to a *pro rata* dividend with the non-borrower for what he has paid upon his stock. He will then be obliged to bear his proper share of the losses. To allow him to credit upon his mortgage the payments upon his stock, would enable him to escape responsibility for his share of the losses and throw them wholly upon the non-borrowers. In other words, the borrower would escape without loss. It will not do to administer the affairs of an insolvent corporation in this manner."[14]

The theory upon which the cases taking the opposite view have been decided is, that the weekly or monthly dues are the purchase money for what the borrower has acquired in advance or in the anticipation of the redemption of all his shares; or, in other words, that the payment of dues is to the end that the borrower's shares will reach par value; that when they do reach par value they will be set off against his loan. Consequently, there-

[13] Towle v. Am. Bldg. & Invest. Co., 61 Fed. Rep. 446; Brown v. Archer, 62 Mo. App. 277; Rodgers v. Hargo, 92 Tenn. 35; Strohen v. Franklin Savs. Assn., 115 Pa. St. 273; City Loan & Bldg. Assn. v. Goodrich, 48 Ga. 448; Windsor v. Bandell, 40 Md. 172; Buist v. Bryan, 44 S. Car. 121; Cesso v. Martin, 13 N. J. Eq. 427; Endlich on Bldg. Assns., sec. 523a.

[14] The following authorities are in accord with the above decision. State Sav. Assn. v. Carroll, 4 Pa. Dist. Rep. 6; Rodgers v. Hargo, 92 Tenn. 35; People v. Lowe, 117 N. Y. 175; Brown v. Archer, 62 Mo. App. 277; Callahan's Appeal, 124 Pa. St. 138; Quein v. Smith, 108 Pa. St. 325. *Contra* to the above decision are Brownlie v. Russell, L. R. 8 App. 235; Assn. v. Buck, 64 Md. 338; Winsor v. Bandell, 40 Md. 172; Assn. No. 6 v. Zucker, 48 Md. 448; Cook v. Kent, 105 Mass. 246.

fore, eliminating the intermediate supposition, the dues are to be considered nothing more or less than payments on the loan. What seems a simple answer to this proposition is that by so doing the borrower will receive, upon the premature dissolution of the association, full value for his shares of stock, and the entire loss will thus be thrown on the non-borrower. Is such a system just which places those who began on the same basis on different levels after the dissolution of the association? The Pennsylvania case undoubtedly lays down the sounder rule.

It is eminently fair for the receiver to compute as best he can, from the *data* at his command, what the value of the stock will ultimately be and allow the borrower the *pro rata* amount as a credit, when he comes to pay off his loan. This is a mere matter of convenience seemingly, but should be followed as it will lessen the amount of money passing through the receiver's hands, and, consequently, lessen the costs of settling up the estate.

We come next to the question whether the receiver must credit the premium on the loan of the borrower. On this question the courts are generally in accord, and without, therefore, entering into a discussion of the principle involved it will be sufficient to give the general grounds for the conclusion reached.[15]

The premium is not a payment in advance, and the contract under which the borrower agrees to pay it is an entire one which does not contemplate a rupture and an apportionment of the premium. "Hence," as Endlich says,[16] "if, at any stage, the society breaking down fails to perform its part of the bargain, the promise to pay the premium loses the consideration upon which it was based, and ought to be regarded as wholly abrogated. To attempt to apportion the premium is simply to treat it as additional interest. To regard it as something with which the borrower has parted, as something which the society has earned as assets in its hands before it has done that which entitles it to retain the premium, is to misconceive its true character and office. It must be true, therefore, that the basis of the borrower's indebtedness is to be taken to be the amount of money actually passing into his hands with legal interest thereon."

The question of crediting the premium is sometimes treated from another point of view which is not strictly in accord with the view just presented, but still is not entirely irreconcilable. In the case of Towle v. The American Building, Loan & Investment Society,[17] where the premium agreed to be paid by the borrower was to be paid on the gross premium plan, it was held that the borrower was entitled to a credit only for that much of the premium which the society could not be said to have earned, or, in other words, that when the normal life of the society is to be regarded as eight years, and it becomes insolvent at the end of six years, the borrower can claim a credit of but two-eighths of the premium. This conclusion is reached on the theory that each member, singly and collectively, is responsible for the premature dissolution. "The officers of the association are their agents, and the results of their investments are alike the fortune or misfortune of each stockholder, whether it be borrower or non-borrower," as is said by Grosscup, J., in the above case.

Whether the above view is the correct view depends upon the meaning of the words "earned premium." The writer is strongly inclined to the first view herein expressed, believing that the premium is earned only when it begets the profits which are to lighten the borrower's burden, which profits fail entirely when the association becomes insolvent. The premium is not earned, does not become an asset until the association has done all that it agreed with the borrower to do. The dissolution of the association breaks the contract, and in consequence the premium must remain a liability of the association, which the borrower is entitled to have credited on his loan.

The question of interest in building and loan association law presents itself in various ways. In the first place interest is paid by the borrower in the same way that he pays his dues and premiums, *i. e.*, in monthly installments.[18] When, therefore, the association is dissolved, the borrower can no longer be com-

[15] Brownlee v. Russell, L. R. 8 App. 235; Assn. v. Buck, 64 Md. 338; Stohen v. Franklin Savs. Assn., 115 Pa. St. 273; Assn. v. Carroll, 4 Pa. Dist. Rep. 6; Rodgers v. Hargo, 92 Tenn. 35; Brown v. Archer, 62 Mo. App. 277.

[16] Endlich on Bldg. Assns., sec. 531.

[17] 61 Fed. Rep. 446.

[18] Chemical Nat. Bank v. Armstrong, 31 U. S. App. 75.

pelled to pay interest. The poignancy of this statement becomes apparent when it is recalled that upon the dissolution of the association the loan of the borrower becomes immediately due and payable.[19]

The question of interest upon unpaid fines, as regard the receiver, arises when the borrower has given a mortgage or bond to secure the payment of fines, dues, etc. Fines, it must be remembered, are fixed penalties in the form of liquidated damages for defaults in payments.[20] In reality, therefore, they assume the shape of interest on the unpaid installments, and interest upon them would be compound interest, contrary to the rules and principles adopted by courts of equity.[21]

The *contra* view to the one above expressed is maintained on the ground that fines secured by a covenant in a mortgage to a building and loan association form part of the principal in taking the account of principal, interest and costs in a foreclosure suit by the building association, and are payable with interest. That these sums become as much principal as the sum originally advanced by way of loan.[22]

It frequently happens that when an association is placed in the hands of a receiver certain of its members are delinquent in the payment of their dues. If the delinquent has given a bond or mortgage to secure payment of his obligations, it would seem that the receiver can proceed upon that instrument to enforce their collection, and it is further held that where the delinquent is a borrowing member, and the receiver proceeds to foreclose the mortgage, he, the receiver, should withhold from the proceeds of the sale an amount corresponding to a *pro rata* proportion of the deficiency to the association.[23]

Having briefly set forth the position of the receiver in his capacity as collector of the assets of an insolvent association, we shall now attempt to point out the general rules that govern the distribution of the fund.

After payment of the costs of the administration, which is the first payment to be made,[24] the first claims to be considered are those which are sometimes called "outside creditors' claims," by which is meant the claims of those who have demands against the association not arising out of any direct connection with the association, such a claim, for instance, as office rent.

In those jurisdictions in which building associations are permitted by statute to borrow money, we shall find notes of the association presented for allowance and classification upon its dissolution. It seems that the holders of these notes must be considered general creditors, and their several amounts allowed in full and paid prior to any payments to the stockholders, but the payment of dues in advance under an agreement that interest shall be paid upon the advances until they are absorbed ought not, it seems, in the case of insolvency, to entitle the stockholder to be treated as a creditor,[25] for although the charters of building associations, as a rule, do not prohibit stockholders paying their dues in advance if they so desire, still such advance payments are *contra* to the proper scope and scheme of building associations, for they are intended to be loaners of money and not borrowers, and especially when we find that such advance payments are made with an understanding that interest is to be paid upon them until they are absorbed by dues, we find the association doing nothing more or less than making an out-and-out loan. To allow these claims as creditors' claims would be converting capital into loans and creating preferred stock in order to work out supposed equities. Such payments should be treated merely as advance payments upon stock, not as loans, and thus in effect carry out the intention of the parties which was to pay up their stock in advance, and by anticipating its maturity receive a discount.

We find further certificates showing that the holders thereof have paid the whole or half of the amount of the shares issued presented for allowance. It is held that such certificates do not constitute promises to pay in the nature of commercial paper, and thus make the holders thereof creditors when the association becomes insolvent,[26] but such holders are to be paid in the same manner and proportionate amounts as the ordinary stockholders.

[19] See *ante*, p.
[20] Goodman v. Durant B. & L. Assn., 71 Miss. 310.
[21] Parker v. Butcher, L. R. 3 Eq. 762; Ingoldby v. Riley, 28 L. T. Rep. (N. S.) 55.
[22] Home Mutual Bldg. Assn. v. Thursby, 58 Md. 284.
[23] Meares v. Davis (N. Car.), 28 S. E. Rep. 188; Thompson v. Assn., 120 N. Car. 420.
[24] Thompson on Building Assns., p. 129, sec. 15.
[25] Post v. Mechanics' Bldg. Assn. (Tenn.), 37 S. W. Rep. 216.
[26] Towle v. American Bldg. Assn., 75 Fed. Rep. 938.

Another class of stockholders we frequently find clamoring for the rights of creditors are those who have given the requisite notice that they desire to withdraw their stock, but who have not been paid prior to the dissolution of the association. It is well settled law that if the withdrawing member was aware of the insolvency of the association at the time of giving his withdrawal notice, he is not entitled to any consideration of preference.[27] But in the cases where the withdrawing member has no knowledge of the insolvency of the association, and is not actuated by a desire to save himself at the expense of his fellow-members, the authorities are not in accord. The contention of those holding that the withdrawing member should be classed as a creditor, is based upon the ground that immediately upon the perfecting of his withdrawal his *status* is changed. He ceases to pay dues, or to take any part in the management of the association. He is no longer entitled to vote or to exercise any of the prerogatives of a stockholder. Admitting all that to be true, it seems, however, that the believers in that doctrine lose sight entirely of the idea of mutuality upon which the very foundation of the building and loan theory rests; and it is the utter disregard of that principle that lays that doctrine open to such severe criticism. It is undoubtedly true that a withdrawing member becomes a creditor when the association is an active, going concern,[28] but here we have the case of an insolvent estate. The *contra* view, and what seems the most equitable view, is set out by Endlich where he says: "There is nothing in the mere fact that one has given a certain number of days' notice that he wants his money, whereby he is, *ipso facto*, invested with an equity to receive it superior to one who has not given such notice. There is, therefore, nothing to counterbalance, much less outweigh, the inequitableness of permitting him to take the fund belonging to his fellow-members in order to pay himself. The true rule upon this subject is undoubtedly laid down by the Supreme Court of Pennsylvania: 'When a building association has failed to fulfill the object of its creation, and has become hopelessly insolvent, * * * after expenses incident to the administration of the estate are deducted, the general creditors, if any, should be paid first in full, and the residue of the fund should be distributed *pro rata* among those whose claims are based upon the stock of the association, whether they have withdrawn and hold orders for the withdrawal value thereof or not. Both classes are equally meritorious, and in marshalling the assets neither is entitled to priority over the other. The claims of each alike are based upon their relation to the association as members thereof.' "[29]

To sum up, then, the order in which the fund of an insolvent building and loan association ought to be distributed is as follows: First, all expenses incident to the administration of the estate; second, creditors whose claims have not arisen from any direct connection with the association; third, creditors whose rights have arisen out of some connection with the association; fourth, stockholders. Beginning with the first class, each class should be paid in full before the next class receives anything.

St. Louis, Mo. H. CHOUTEAU DYER.

[27] Hanney v. Bldg. Assn., 16 W. C. N. 450; Quein v. Smith, 108 Pa. St. 325.

[28] Building Assn. v. Silverman, 85 Pa. St. 394; Building Assn's Estate, 12 W. N. C. 207.

[29] In accord with the view that withdrawing stockholders should not be classed as creditors, see Christian's Appeal, 102 Pa. St. 184; Choisser v. Young, 69 Ill. App. 252; *Re* Alliance Society, 49 L. T. (N. S.) 73; Hohenshell v. Home Savings & Loan Assn, 140 Mo. 566. *Contra:* Englehard v. Loan & Savings Assn., 25 N. Y. Sup. 835; Sunderland v. Building Assn., 24 Q. B. Div. 394; *In re* Blackburn, 24 L. R. Ch. Div. 42.

SEDUCTION—ACTION BY PARENT—LOSS OF SERVICES.

ANTHONY v. NORTON.

Supreme Court of Kansas, March, 11, 1899.

The common law rule in actions by a parent for damages for the seduction of his daughter, which required him to sue, in the capacity of a master, for the loss of her services as a servant, although in fact permitting a recovery by him in his parental relation, was the rule of a legal fiction, which no longer obtains, under the reformed procedure, because of the abolition by the Code of fictions in pleading, and its requirement to state the actual facts in controversy.

DOSTER, C. J.: This was an action brought by Mrs. E. M. Norton, a widow, against O. L. Anthony, for damages for the seduction of her daughter, Turie Norton. Besides a denial of the imputed act, the defense was that the daughter was of full age, and did not, as to her mother, stand in the relation of a servant to a mistress,

and that no loss of service to the mother, as mistress, had resulted from the alleged wrong. The daughter was about 25 years old at the time of the seduction charged, and was clerking in a store. At and before that time she lived with her mother, as a part of the family, and occasionally performed some slight household services. The court, among other matters of law, instructed the jury as follows: "If you find from the evidence that the plaintiff is a widow, and the mother of Turie Norton, whom it is alleged that the defendant seduced, and that at the time of said seduction the said Turie Norton lived with her mother and performed service for her (and you are instructed that the performance of any slight service is sufficient to satisfy the law in that regard), then plaintiff will be entitled to recover, if you find that the seduction was accomplished as alleged. That you may find that the said Turie Norton was in the service of the plaintiff, you need not find that a contract existed between them for such service. It will be sufficient if she lived with her mother when the seduction occurred, and took part in the housework. And such service need not be paid for, and no pay need be promised or expected." A request made by the defendant for the following instruction was refused: "I instruct you that the mere relation of mother and daughter will not permit a recovery by the former for the seduction of the latter."

The instruction given is in accord with the almost unanimous voice of the courts, and, if it were the only one to be considered, we should have no hesitation in approving it; but the request preferred by the defendant and refused by the court brings before us the question whether an action for seduction can be maintained upon the mere relation of parent and daughter alone—especially where, as in this case, the daughter is of age, and lives with her parent, and constitutes a part of the family. Upon this question the holdings of the courts are uniform to the effect that an action for the seduction of a daughter, brought in the parental capacity alone, is not maintainable, except as allowed by statute. At common law the action is maintainable by the parent only in the capacity of master or mistress, and it must be in form an action for loss of the daughter's services as a servant. That the rules of the law should thus degrade the injured parent's right of action to one of mere compensation for the impaired ability of the daughter to perform labor, and for the recovery of the expenses incident to such sickness as results from the wrong done, has been, throughout the course of judicial decision, a matter of regret among the judges. So grievously has this reproach upon the law been felt, that the courts quite a time ago began to sanction a wide latitude of evidence as to damages in such actions, until now the rule has become firmly established that notwithstanding the action must be, in form, for loss of services and expenses incurred in sickness, yet compensatory damages for parental and even general family shame and mortification may be recovered, together with an additional punitory sum for the flagrant wrong committed by the seducer. It will be profitable at this point to illustrate by quotations from the authorities the present liberal holdings of the courts upon this subject, and to note the extreme departure of the rule of proof from the rule of pleading, and also to note the lament of the judges over the arbitrary and technical theory which compelled the parent to disguise his action in the false and abhorrent form of a master's suit for loss of services.

Mr. Sedgwick, in his work on the Measure of Damages (8th Ed., vol. 2, § 471), says: "The common-law action of case, by the father or master, for seducing a daughter or female servant, is one of a peculiar character. It is eminently a legal fiction. The demand is based upon the mere loss of service, but the damages are very much at large, and in the discretion of the jury." Following the above statements, the author briefly traces the evolution of the rule of damages from one of mere compensation to the master for loss of services to one of compensation for parental mortification, anguish and violated honor. In 3 Suth. Dam. p. 735, it is said: "At common law this action rests on the relation of master and servant, and proceeds, in form, for loss of service. Trespass *vi et armis* is deemed the proper action where the servant resides with the master or parent. Case may also be brought, where the injury is not committed with force, or where the servant is only constructively in the master's service. Slight evidence will establish sufficiently the relation, and the extent of the loss of service is not the measure of damages. The allegations and proof on these points are almost an unmeaning formula—an obeisance to a shadow of the past—to reach the actual grievance. The action in reality is to afford redress for the injury done to the parent or other near relative, or person standing *in loco parentis*, for the dishonor and degradation suffered by the family in consequence of the seduction. And large damages, which the court will seldom relieve against, are recoverable, both for recompense to the plaintiff and punishment to the defendant. Caton, J., said: 'Technically, the ground of recovery is the loss of the services of the daughter; and the rule of the books seems to be that the father must prove some service, in order to entitle him to maintain the action. This is nominally the ground on which the plaintiff's right of action rests, while practically the right to recover rests on far higher grounds,—that is, the relation of parent and child, or guardian and ward, or husband and wife, as well as that of master and servant; and it seems almost beneath the dignity of the law to resort to a sort of subterfuge to give the father a right of action which is widely different from that for which he is really allowed to recover damages. But the law may still require proof of service, or at least the right to service, when the child is a minor; but this, as well as any other fact, may be

proved by circumstances sufficient in themselves to satisfy the jury that the party seduced did actually render service to the plaintiff, and the most trivial service has always been held sufficient.' Doyle v. Jessup, 29 Ill. 462. Even in England, where stricter proof of service is required, Blackburn, J., said: 'In effect, the damages are given to plaintiff as standing in the relation of parent, and the action has at present no reference to the relation of master and servant, beyond the mere technical point on which the action is founded.' Terry v. Hutchinson, L. R. 3 Q. B. 602. This is according to the general current of authority. While the courts adhere so far to the original distinctive character of the action as to require proof that the seduced female was in the service of the plaintiff at the time of the seduction, they do not require very strict proof. Very slight evidence of loss of service suffices, in favor of one standing *in loco parentis*, and affected by the graver consequences of the seduction. The actual loss sustained by the plaintiff, through the diminished ability of his daughter, relative, or ward to yield him personal service, as well as the servile position of the supposed servant herself in the family of her protector, is ordinarily little more than a mere fiction. It is one of those cases in which an action devised for one purpose has been found to serve a different one, by the aid of the discretion which courts have assumed in instructing the jury, and the readiness of the jury to render substantial justice by their verdict, where the forms of law imposed by the instructions of the court admit of their so doing." In Pol. Torts, 201, it is said: "The capricious working of the action for seduction in modern practice has often been the subject of censure. Thus, Sergeant Manning wrote forty years ago: 'The *quasi*-fiction of *servitum amisit* affords protection to the rich man, whose daughter occasionally makes his tea, but leaves without redress, the poor man, whose child is sent unprotected to earn her bread amongst strangers. All devices for obtaining what is virtually a new remedy by straining old forms and ideas beyond their orginal intention are liable to this kind of inconvenience. It has been truly said that the enforcement of a substantially just claim ought not to depend on a mere fiction, over which the courts possess no control.'" In Phelin v. Kenderdine, 20 Pa. St. 361, the court says: "Although the action by a parent for the seduction of his daughter has its technical foundation in the loss of his daughter's services, it is well settled that proof of the relation of master and servant, and of the loss of service by means of the wrongful act of the defendant, has relation only to the form of the remedy, and that the action being sustained, in point of form, by the introduction of these technical elements, the damages may be given as a compensation to the plaintiff, not only for the loss of service, but also for all that the plaintiff can feel from the nature of the injury." In Badgeley v. Decker, 44 Barb. 588, the court says: "The rule is adhered to, with us, that the loss of service is the legal *gravamen* of the action. Bartley v. Richtmyer, 4 N. Y. 38. But, to accommodate the action to cases where the daughter rendered no service, a presumed or a fictitious service is resorted to as the *gravamen*. 3 Burrows, 1893; Bennett v. Allcott, 2 Term R. 166, 168; Halloway v. Abell, 7 Car. & P. 528; Martin v. Payne, 9 Johns. 389; Clark v. Fitch, 2 Wend. 459; Hewitt v. Prime, 21 Wend. 79-82. All the modern cases hold that the legal *gravamen* of the action is not the real *gravamen*, as is apparent when we come to consider the rule of damages recognized in the action, and judges have not unfrequently spoken of the action as resting upon a fiction. * * * The real *gravamen* of the action is not the loss of service. That is a very small item in the measure of damages. The loss of service in many cases could not be considered anything, in reality, and often when the last service is performed the highest damages are given. The real *gravamen* of the action is the mortification and disgrace of the family, and the wounded feelings of the plaintiff." In Davidson v. Abbott, 52 Vt. 573, the court says: "The action, in form, is to recover damages, for loss of service; but it has become well settled for a century in England and this country that the loss of service is slight and nominal in most cases, and the recovery is essentially for wounded feelings, dishonor, and disgrace." In Riddle v. McGinnis, 22 W. Va. 271, the court says: "While at common law the father and master was obliged to allege and prove the loss of service, however trivial or valueless, as the foundation of the recovery, yet it was regarded only as the foundation; for the courts have always treated the relation of master and servant, and the loss of service, as innocent fictions, which merely served to give the court jurisdiction, while the measure of the plaintiff's damages was not merely the actual value of the service lost, but compensation for the shame, disgrace, and anguish suffered by the father in the defilement and ruin of his daughter. These elements now enter into, and generally constitute, the real measure of damages, while the jury, in estimating them must almost necessarily be influenced and controlled by the position of the parties in society, and by all the other circumstances surrounding each particular case."

Many more quotations like those above could be made from text-writers and reported decisions. The view of all legal authorities upon the subject are to the effect that the rule which requires a parent suing for the seduction of a daughter to plead loss of her services as his servant, but which obligates him to only nominal proof of the cause of the action stated, is an empty and senseless legal fiction,—a pretense and sham which does discredit to the law, and with which it were highly desirable to dispense. What seems to us a satisfactory definition of a fiction of law, though one admittedly broad, is that given in Maine, Anc. Law, p. 25. It is: "Any assumption which conceals, or affects to conceal, the fact that a rule of

the law has undergone alteration, its letter remaining unchanged, its operation being modified. * * * The fact is that the law has been wholly changed. The fiction is that it remains what it always was." The substance of all the definitions of a legal fiction is that it is a pretense that the law as to a particular matter is different from what it really is. The legal fiction in actions by a parent for seduction is that he has lost the services of his daughter, and has been subjected to expense on her account, wherefore he sues for such loss and expense, and for them alone. The fiction assumes his right to recover for these, and these alone. The fact is that he has lost no services, and has been subjected to no expense; but the law is that, notwithstanding his lack of loss and expense, he may nevertheless recover for the wounds to his parental fellings, and may mulct the seducer in punitive damages also. We say the law is that he may recover notwithstanding his lack of loss in his capacity as master. The courts make a pretense of holding him to proof of such loss, and make a pretense of withholding relief if he fails to make the proof, but it is a pretense only. Proof of the very slightest kind of service will suffice. The service proved need be nothing more than nominal. It need not be actual or beneficial, and many of the courts hold that, where the daughter was not actually in the service of the parent, she nevertheless was, if a minor, constructively in his service, and that such constructive service was sufficient to uphold the right of action. It is a shameful pretense to hold that a daughter whose labors, for instance, merely consists in pouring the tea at her father's table and doing the honors of his household to his guests, is in his service as a servant, and that he may recover damages because of the loss of such labors through her seduction. Many of the courts have deplored the lack of legislation to enable them to dispense with the fiction in question, so as to allow them to bottom cases in theory, as well as in fact, upon the actual and meritorious ground upon which the damages are really awarded. If by this is meant legislation which in express terms abrogates the fiction of the relation of master and servant, we deny its necessity in this and other States which have adopted the reformed Code of Procedure. The Code was devised for the very purpose of dispensing with legal fictions and antiquated forms of action. Its spirit in this respect can be illustrated by a score or more of its provisions. Out of them one general rule of reform is collectible, and that is that the actual facts from which the claimed right of action is deducible must be stated. Nay, more, it is even expressed in some of the sections of the Code. "The distinction between actions at law and suits in equity, and the forms of all such actions and suits heretofore existing are abolished." Section 6. "There can be no feigned issues." Section 7. "The rules of pleading heretofore existing in civil actions are abolished." Section 85. "The petition must contain a statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition." Section 87. "All fictions in pleading are abolished." Section 116. If in fact a right of action is given to the parent, as such, for the seduction of the daughter; if in fact the injury done is to the parent in that relation; if in law the courts take to themselves the right to probe beneath the thin veneering of the form of the action, as one for the loss of services, in order to reach the heart and core of the controversy and give damages for the actual injury committed; if these things are allowed and done, it cannot be that the liberal rules of the Code still require conformity to the fictitious and embarrassing formulas of the common law. Not only was it the design of the Code to simplify the rules of pleading by reducing to unity all the various forms of action existing at common law, and requiring the parties to state the actual facts of the controversy, but it contemplated the existence of the modern and enlarged ideas of justice as to matters of substantive right which had begun to prevail. To furnish a better medium for the working out of the newer and more equitable thought was equally its design. No relation in life has been more visibly affected by the humanizing influence of latter-day concepts of justice than has the domestic one. Originally the child was in the fullest sense the slave of its father. Indeed, the origin of slavery, according to the view of a most learned and deep-searching historian, was in the family circle. The child was born into slavery to its sire. Ward, Ancient Lowly, chs. 2, 3. In the course of time the legalized state of the child passed from that of a slave to that of a servant of the one who had begotten it. Now it holds, in general estimation, at least, if not in law, a quite nearly coordinate position in the family. As long as its minority lasts, it is under the guardianship and tutelage of its parents, but it is no longer in fact, nor in legal theory, their servant; and when, it being a daughter, suit is brought on account of its seduction, such suit is not in fact founded upon the idea of service lost, but upon the idea of parental affection wounded, parental anguish endured, and parental liability for care and nurture increased. Damages, therefore, in respect to the violated parental relation, are the facts which the Code ordains shall be stated in the petition; and the pretense of services lost to the parent, as a master, is the legal fiction of pleading, which the Code ordains shall be abolished. If necessity ever existed for cloaking the real cause of action under the nominal disguise of another one, it no longer exists, and we hold accordingly. In this State a parent may maintain an action for the seduction of the daughter without averment or proof of loss of services or expenses of sickness.

A question subsidiary or incidental to the one above discussed now arises. In this case the daughter was of full age. The law had emancipated her from the guardianship and control of

her mother, and, so far as legal liability is concerned, the mother was absolved from responsibility for the acts and conduct of the daughter. May the mother, therefore, maintain the action? As before stated, the daughter constituted, in fact, a part of the mother's family. The mother was the head of that family, and was charged with that moral responsibility for the virtue and orderly conduct of its various members which devolves upon the head of a household. The purity and rectitude of behavior of those within the domestic circle were in an especial manner the objects of her solicitude and care. The law, therefore, will not deny compensation to her for the invasion of her home by the ruthless destroyer of its peace and happiness, simply because in law she could no longer command the services of her daughter. The mere fact of the legal emancipation of the daughter from parental control has never been made a test of the right to maintain the action for seduction. When the right to maintain it was founded upon the legal fiction of loss of services, the cases divided themselves into two classes,—one, where the daughter was a minor, in which instance the right to the service was legally presumed; the other, where the daughter was of age, in which instance proof of a contract of service was required, or in lieu thereof proof of facts from which it could be inferred. The right of action was given in the last-mentioned case, as well as in the former, and the court although adherring in the last case, as well as on the former, to the fiction of the loss of services, nevertheless gave damages in vindication of the parental right, and in melioration of outraged parental feelings. In Badgley v. Decker, 44 Barb. 577, and in Davidson v. Abbott, 52 Vt. 570, the daughters were 25 and 31 years, respectively, at the times of their seduction. The actions were held maintainable in these cases; and in the following ones they were likewise upheld, although the females had passed the period of minority: Sutton v. Huffman, 32 N. J. Law, 58; Wert v. Strouse, 38 N. J. Law, 185; Lamb v. Taylor, 67 Md. 85, 8 At. Rep. 760; Moran v. Dawes, 4 Cow. 412; Lipe v. Eisenlerd, 32 N. Y. 229; Villepigue v. Shular, 3 Strob. 462; Long v. Keigtley, 11 Ir. Law T. 77. Many other like cases might be cited, but these are sufficient to show that the minority of the daughter has never been held essential to the right of recovery by the parent. There exists no reason for distinguishing between cases of minority and of full age of the daughter, and granting a recovery in the former while denying it in the latter, merely because the legal fiction of services lost, upon which they were formerly both prosecuted, has been cleared out of the way, and the right of recovery placed in law as well as in fact upon its real ground. There is no magic in the passing of a daughter's eighteenth birthday anniversary, to relieve against parental solicitude and care, or parental anguish over her fall from virtue. At what time in the advancing age of a daughter the feelings of parental mortification over such fall become sufficiently dulled, and the sense of parental responsibility sufficiently weakened, to reduce the damages to a nominal sum, or to deny them altogether, we need not concern ourselves. The law heretofore has set no time for the passing of parental feelings as to such matter into a condition of indifference, and we need not speculate as to it. Each case will depend upon its own particular facts, and as to such facts the jury is the judge.

Two other claims of error are made. They are founded upon the court's instructions, and its refusal of requests for instructions. One of them relates to the meaning of the word "seduction," and raises a question as to its legal definition. The other relates to the measure of damages recoverable. Both of them, however, are unfounded, and the judgment of the court below will be affirmed. All the justices concurring.

NOTE.—*Recent Cases on Civil Liability for Seduction.*—In an action for seduction it appeared that plaintiff, 16 years of age, was working as a waitress in an hotel, and sleeping alone in a cottage near by; that she was on friendly terms with defendant, who was her employer, and a man of wealth and years; that defendant called on her at the cottage, after dark, and, after conversing on ordinary topics, offered her a glass of wine, which she drank, and was soon scarcely able to stand without assistance; that defendant placed his arm around her, promised her future friendship and assistance, and finally assisted her to a bed, where he had intercourse with her. Held, that the evidence establishes a cause of seduction, whether plaintiff was or was not conscious at the time of the intercourse. Marshall v. Taylor (Cal.), 32 Pac. Rep. 867. In an action in tort for seduction under promise of marriage, it is no defense that defendant was an infant. Becker v. Mason (Mich.), 93 Mich. 336, 53 N. W. Rep. 361. Const. art. 4, sec. 1, provides that "feigned issues" shall be abolished. Code, sec. 177, provides that an action for her own seduction, since she is the real party in interest, and the common-law action by the parent, guardian, or master for loss of services caused by the seduction of the child, ward, or servant, presented merely a "feigned issue." Hood v. Sudderth, 111 N. Car. 215, 16 S. E. Rep. 397. In an action by a father for loss of the services of his daughter, who was over 21 years of age, and who, it was alleged, was seduced by defendant while in his employ, the complaint sufficiently alleged the existence of the relation of master and servant at the time of the seduction when it averred that the daughter was an imbecile, and that plaintiff has never manumitted her, on that account, and had always managed her affairs, but that she was capable of performing the ordinary drudgery about the farm; that defendant engaged her services from plaintiff, and accounted for them to him; that "after she came home she rendered services to plaintiff as a domestic;" that "plaintiff had the right to reclaim her services at any and all times;" and that "she was disabled and disqualified from performing services for the plaintiff for many months" by the acts of defendant. Hahn v. Cooper (Wis.), 54 N. W. Rep. 1022. Where an adult daughter has continued to live with her father, has been his housekeeper, and cared for his minor children, and has occasionally, with his consent, done work away from home, dividing her earnings with him, the father has an action

for loss of service for her seduction. Bayles v. Burgard, 48 Ill. App. 371. In an action for seduction, testimony that the girl was pregnant by defendant is admissible, though the intercourse is admitted. Badder v. Keefer (Mich.), 58 N. W. Rep. 1007. Under Code, sec. 177, providing that every action must be prosecuted in the name of the real party in interest, a father may bring an action for damages resulting from the seduction of his infant daughter,—the loss of her services, the expenses of her illness, her death, and the consequent injury to his affections. Scarlett v. Norwood, 115 N. Car. 284, 20 S. E. Rep. 459. Gen. St. 1878, ch. 66, sec. 33, provides that "a father, or in case of his death, or desertion of his family, the mother may prosecute as plaintiff for seduction of the daughter, though the daughter is not living with or in the service of the plaintiff at the time of the seduction, or afterward, and there is no loss of service." Held, that a father may sue for the seduction of his adult daughter if his home is in fact her home, though she was seduced while employed elsewhere. Schmit v. Mitchell (Minn.), 61 N. W. Rep. 140. A father may recover in an action for debauching his daughter, although she is over the age of 21 years, and is residing with, or in the employment of, another, if the relation of master and servant continues to exist between them, so as to entitle the father to her services at the time of the debauchment. Hartman v. McCrary, 59 Mo. App. 571. The existence of the relation of master and servant between a father and daughter over 21 years of age is a question of fact, for the jury, in an action by him for her debauchment, upon evidence tending to show that she had for several years worked out by the week, and received and used her wages with his approval, but that when not employed she would remain at home, working without wages, like the rest of the family. Hartman v. McCrary, 59 Mo. App. 571. In an action by a father for the seduction of his infant daughter, evidence that defendant told the girl that if she would have intercourse with him, and anything should happen to her, he would marry her, is admissible to show how the seduction was accomplished. Ayer v. Colgrove, 81 Hun, 322, 30 N. Y. S. 788. The damages in an action by a father for the seduction of his daughter, though predicated upon loss of services, is not confined to that, but may include compensation for the shame, mental suffering, and injury to the good name of the family. Garretson v. Becker, 52 Ill. App. 255. Though a woman marries her seducer, she may, after the court has, on her application, rendered a decree of nullity as to the marriage, sue him for the seduction. Henneger v. Lomas (Ind. Sup.), 44 N. E. Rep. 462. A woman cannot, under Rev. St. 1894, sec. 264 (Rev. St. 1881, sec. 263), providing that "any unmarried female may prosecute as plaintiff an action for her own seduction," after marrying her seducer and then obtaining a divorce, sue him for the seduction; the rule of the common law that marriage extinguished antenuptial rights of actiour between husband and wife, and that they were not revived by the divorce, not being changed, as to torts, by Rev. St. 1894, sec. 6976 (Rev. St. 1881, sec. 5131), providing that a married woman may bring an action in her own name against any person for damages to her person or character, the same as if she were sole, and the money recovered shall be her separate property, and her husband in such case shall not be liable for costs; this being a mere change of procedure as to actions against others. Henneger v. Lomas (Ind. Sup.), 44 N. E. Rep. 462. One who seduces an unmarried woman is not liable in damages to her affianced husband. Case v. Smith (Mich.), 65 N. W. Rep. 279. In an action by a father for seduction of an adult daughter, it must appear that the daughter resided in her father's family, and performed some acts of service, however slight, though it is not necessary that the services should be such as the father can command. Beaudette v. Gagne, 87 Me. 534, 33 Atl. Rep. 23. Evidence of the previous unchastity of the woman seduced is admissible in mitigation of damages. Stewart v. Smith (Wis.), 65 N. W. Rep. 736. In an action for seduction under promise of marriage, plaintiff need not show expressly that the seduction was on account of such promise, but the fact may be inferred from the circumstances. Walters v. Cox, 67 Mo. App. 299. Evidence, in an action for seduction of plaintiff's daughter, that plaintiff's wife was absent for a year, and that plaintiff and his two daughters lived together, that plaintiff was away during the day, and that young men lodged at the house, and that another daughter of plaintiff was seduced during such time, was inadmissible to show negligence of the plaintiff. Tourgee v. Rose (R. I), 37 Atl. Rep. 9. In an action for seduction under promise of marriage, proof that plaintiff had been a member of a church for a number of years is admissible. Ferguson v. Moore (Tenn. Sup.), 39 S. W. Rep. 341. Seduction is a continuous act, and, so long as the illicit relations are kept up by continuous acts, promises, or artifices of the man, the statute of limitations will not run against an action by the woman for damages. Ferguson v. Moore (Tenn. Sup.), 39 S. W. Rep. 341. Damages for an abortion, and the indignities incident thereto, are not recoverable under a general count for seduction, in which the abortion is not alleged nor special damages therefor claimed. Ferguson v. Moore (Tenn. Sup.), 39 S. W. Rep. 341. Charges or imputations made during a trial against the character or impeaching the virtue of plaintiff, if untrue, are presumed to have been wantonly made, and may properly be considered by the jury as an element of damages. Ferguson v. Moore (Tenn. Sup.), 39 S. W. Rep. 341. An instruction, in an action for seduction under promise of marriage, is correct, which states that it is not indispensable that the man should have used seductive arts or promises, and any act or promise or deception by which he overcame the scruples of the plaintiff would authorize a recovery, but, if plaintiff voluntarily submitted to the connection without being deceived, and without any false promises, deception or artifice, she could not recover. Ferguson v. Moore (Tenn. Sup.), 39 S. W. Rep. 341. A woman, though she has consented to her dishonor, is not thereby estopped to sue therefor. Rabeke v. Baer, 73 N. W. Rep. 242. Debauchment with seduction is one injury, and without it is another; and in the latter case there can be no recovery, beyond the loss of service, and incidental expenses. Mohelsky v. Hartmeister, 68 Mo. App. 318. Where the debauchment of a daughter results in impairing her capacity to perform her ordinary services, the parent is entitled to recover. Mohelsky v. Hartmeister, 68 Mo. App. 318. The word "debauched" in a declaration for seducing the plaintiff's daughter is sufficient to cover the charge of seduction. Mighell v. Stone, 74 Ill. App. 129. The father has a cause of action for the seduction of his minor daughter, even though she lives in the family of a third person, and receives and controls her own wages, where it does not appear that he has ever relinquished his legal right to demand her services. Ingwaldson v. Skrivseth, 75 N. W. Rep. 772. A married woman deserted by her husband cannot recover damages for the seduction of her daughter, over 21 years old, unless she shows an express contract establishing the relation of

mistress and servant between them. Matthews v. Koch, 20 Pa. Co. Ct. Rep. 363. In an action by a father for the seduction of his daughter, it is proper to instruct the jury that the plaintiff is entitled to recover such exemplary damages for the disgrace brought upon him and his family as the jury may deem proper. Migheli v. Stone, 74 Ill. App. 129.

BOOKS RECEIVED.

The American State Reports, Containing the Cases of Value and Authority Subsequent to Those Contained in the "American Decisions" and the "American Reports." Decided in the Courts of Last Resort of the Several States. Selected, Reported and Annotated, By A. C. Freeman, and the Associate Editors of the "American Decisions." Vol. 65. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers, 1898.

HUMORS OF THE LAW.

Judge (prudish and severe)—"Seems to me you have appeared frequently before me."

Prisoner—"Very likely, your Honor. I used to tend bar at Billy Boyle's."

Who He Was.—"Are you the defendant in this case?" asked the judge sharply.

"No, suh," answered the mild-eyed prisoner. "I has a lawyer hired to do de defendin'. I'se de man dat done stole de ahticles."

Counsel—"I insist on an answer to my question. You have not told me all the conversation. I want to know everything that passed between you and Mr. Clapper."

Reluctant Witness—"I've told you everything of any consequence."

"You have told me that you said to him, 'Clapper, this case will get you into court some day.' Now, what did he say in reply?"

"Well, he said: 'Dapper, there isn't anything in this business that I'm ashamed of, and if any snoopin' little yee-hawin', four-by-six, gimlet-eyed lawyer, with half a pound of brains and sixteen ounces of jaw, ever wants to know what I've been talking to you about, you can tell him the whole story.' "

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ABATEMENT—Another Action Pending.—If two suits be instituted at the same time on the same cause of action by the same plaintiff against the same defendant, but one of them is against the defendant in his personal capacity and the other is against him in an official capacity, so that the judgments in the suits would be capable of reaching different funds, a plea, which shows this difference in the nature of the suits, and sets up the pendency of the one in abatement of the other, is bad.—DENGLER v. HAYS, N. J., 42 Atl. Rep. 775.

2. ACCORD AND SATISFACTION—Pleading.—Where the defense to an action is accord and satisfaction, the plea, to be good, must aver an acceptance by the creditor, in satisfaction of his debt, of the property which the debtor alleges he delivered to him in full payment of the claim sued for.—VANHOUSEN v. BROEHL, Neb., 78 N. W. Rep. 624.

3. APPEAL—Review—Error.—Error, if any, in holding a provision requiring a mortgage to be paid in gold valid, is harmless, where the decree of foreclosure does not require payment in any particular money, since, conceding the invalidity of the gold clause, the liability to pay in legal tender remains.—RAE v. HOMESTEAD LOAN & GUARANTY CO., Ill., 53 N. E. Rep. 220.

4. ASSIGNMENT FOR CREDITORS—Proof of Claim.—A creditor, by filing with an assignee for creditors his debt against the assignor, and accepting from such assignee a *pro rata* dividend upon such debt, in accordance with the terms of a general assignment for creditors made under the statutes of this State, does not thereby affect his right to subject to his debt personal property reserved by the assignor from his assignment as exempt, but which in law is not exempt from such creditor's debt, because the debt was contracted for the purchase money of the property.—CATOR v. BLOUNT, Fla., 25 South. Rep. 283.

5. ATTACHMENT—Claims by Third Persons.—In order to maintain a claim under the statutes of this State to personal property levied upon by an officer, the claimant must, at the time he institutes his proceeding, have not only some right in the property superior to the writ levied upon it, but he must have a right to present possession of such property.—STANSEL v. ROUNTREE, Fla., 25 South. Rep. 277.

6. BAILMENTS—Storage—Lien.—In the absence of any agreement, the common law does not give to a person, not an innkeeper or warehouseman, a lien on personal property for its storage.—WHITLOCK MACH. CO. v. HOLWAY, Me., 42 Atl. Rep. 799.

7. BENEFICIAL ASSOCIATIONS — Premature Action.—Where, by the by-laws of a beneficial association, the mortuary tax assessed is to be remitted to that heir of a deceased member who is adjudged to have the greatest right thereto, an action by an heir to enforce payment to him is prematurely brought if instituted before the association decides who is entitled to the benefit.—SOCIETA DI MUTUO SOCCOROSO ED ISTRUZIONE FRA GLI OPERAI ITALIANI v. CENNI, N. J., 42 Atl. Rep. 743.

8. BILLS AND NOTES—Accommodation Notes.—The beneficiary of an accommodation note took it up and indorsed it, and afterwards died. In a suit by the accommodation maker against the indorsee, to which the decedent's administrator was a party, the indorsee released all claims against the decedent's estate. Held, that the estate, being still primarily liable to the accommodation maker, had an interest in the suit, authorizing the administrator to call the maker as a witness in its behalf, as permitted by Code, § 3346.—COTTRELL v. WATKINS, Va., 32 S. E. Rep. 470.

9. BILLS AND NOTES — Accommodation Note. — A promissory note given by the maker to the payee, at the request of a third person, to enable the payee to discharge a debt due to the latter, is, in a legal sense, made for the accommodation of the payee, and not of his creditor.—THOM v. KIBBEE, N. J., 42 Atl. Rep. 729.

10. BILLS AND NOTES — Indorsement—Extension of Time of Payment.—An indorser of a note is not released from liability by an agreement of the holder with a subsequent indorser to extend the time of payment.—WRIGHT v. INDEPENDENCE NAT. BANK, Va., 32 S. E. Rep. 459.

11. BUILDING AND LOAN ASSOCIATIONS—Withdrawal Value.—Code, 1896, § 1264, authorizing an administrator to transfer his decedent's stock in a corporation, and to receive dividends, does not entitle a foreign administrator of a non-resident stockholder of a building and loan association to payment of the withdrawal value of his stock, where it had not been reduced to possession by him before a resident administrator had been appointed.—GRAYSON v. ROBERTSON, Ala., 25 South. Rep. 229.

12. CANCELLATION OF INSTRUMENTS—Laches.—Where a husband, for several years, openly and notoriously supported his wife's mother and unmarried sister, on the faith of a conveyance to him of the mother's homestead, assented to by the mother and daughter, the other children, having made no objection until after the mother's death, are precluded from having the conveyance rescinded, and the title to the homestead revested in them.—CROSS v. TICE, Wis., 78 N. W. Rep. 564.

13. CARRIERS—Injury to Passenger—Negligence.—A passenger on a freight train, who voluntarily and unnecessarily rides in a freight car containing a horse and household goods which he is shipping over the line of road, instead of riding in the caboose attached to the train, which is provided for the accommodation of passengers, and who is injured by the negligent handling of the car, will be deemed guilty of contributory negligence; and the permission of the trainmen to ride in the freight car will constitute no excuse for his act.—WALKER v. GREEN, Kan., 56 Pac. Rep. 477.

14. CHATTEL MORTGAGE—Notice.—One who bargains for the future delivery of a quantity of corn to be taken from the stalk in a designated field is charged with notice of a then existing and duly-recorded chattel mortgage, in which such corn is described as a growing crop.—CHICAGO LUMBER CO. v. HUNTER, Neb., 78 N. W. Rep. 619.

15. CHATTEL MORTGAGES — Rights of Mortgagee.—Plaintiff advertised chattels for sale under a mortgage from T to plaintiff, after which they were taken from plaintiff's possession on execution against T. In an action to recover possession, held, that the mortgage and notice of sale did not estop plaintiff from denying that T had any interest in the property at the time of levy, if plaintiff did not intend that the creditor should rely on the information contained in the mortgage and notice, and such information did not induce the creditor to issue the execution.—SWEETMAN v. RAMSEY, Mont., 56 Pac. Rep. 361.

16. CONSTITUTIONAL LAW — Legislative Powers — Change of Name.—Const. art. 4, § 25, provides that the legislature shall not pass local or special laws changing the names of persons or places. Code Civ. Proc. §§ 1275-1279, provide that a change of name may be made by the superior court, in its discretion, on a petition therefor, stating, among other things, the reasons for such change, and on notice of hearing. Held, that such provisions of the Code are not unconstitutional, as casting upon the court the exercise of legislative power, contrary to Const. art. 3.—IN RE LA SOCIETE FRANCAISE D'EPARGNES ET DE PREVOYANCE MUTUELLE, Cal., 56 Pac. Rep. 458.

17. CONSTITUTIONAL LAW — State Legislature.—The constitution of this State confers the supreme executive power upon the governor, and provides that he may, on extraordinary occasions, convene the legislature by proclamation. Such proclamation was issued, calling the members of the legislature together in extra session 19 days before the time fixed by law for a meeting of the regular session. The proclamation did not expressly state that an extraordinary occasion had arisen, but it referred to the power vested in the governor by the constitution to make such call. This was followed by a message to the members convened, suggesting that legislation was demanded by the people respecting freight rates to be charged by railroad companies. Held, that an extraordinary occasion was presented, within the meaning of the constitution.—FARRELLY v. COLE, Kan., 56 Pac. Rep. 492.

18. CONTRACTS—Customs—Parol.—A logging contract, requiring timber to be cut in a "workmanlike" manner, means the customary way of cutting timber in the locality where the contract is to be performed.—SHORES LUMBER CO. v. STITT, Wis., 78 N. W. Rep. 562.

19. CONTRACT—Subscriptions — Construction.—In an action on a subscription note, to be paid on the location and commencement of construction of a church within a specified time, initiatory steps and discussions of the congregation preceding the execution of the note constitute no defense, since the whole contract will be presumed to have been included in the written instrument.—MICHELS v. RUSTEMEYER, Wash., 56 Pac. Rep. 380.

20. CORPORATIONS — Action by Receiver. — Under Burns' Rev. St. 1894, § 3435 (Horner's Rev. St. 1897, § 3012), providing that when a receiver of a corporation is appointed to wind up its affairs, upon the expiration of its charter, he may sue in the name of the corporation or otherwise, a receiver suing to collect a debt due the corporation may sue in his own name.—HATFIELD v. CUMMINGS, Ind., 53 N. E. Rep. 231.

21. CORPORATIONS—Directors—Sale of Corporate Property.—Directors to whom the corporation is indebted may purchase corporate property sold for the purpose of paying its debts.—PATTERSON v. PORTLAND SMELTING & REFINING WORKS, Oreg., 56 Pac. Rep. 407.

22. CORPORATIONS—Equity—Parties.—Where the entire real controversy to which a bill in equity against a corporation relates is between the complainants and the corporation, no other party is necessary, and the fact that defendant's officers are named in the prayer for relief does not make them parties, nor indicate that they should be parties, but merely imports that they should be required by the court to act on behalf of the corporation; but where it appears that the real matters of complaint are the alleged misconduct of the officers, and that the suit is at least in part against

them, they must be joined.—MORSE v. BAY STATE GAS CO. OF DELAWARE, U. S. C. C., D. (Del.), 91 Fed. Rep. 944.

23. CORPORATIONS — Income Bonds — Contract.—Income bonds issued by a corporation, the interest on which is payable from the net income of the corporation for the preceding year, no interest to be paid unless such income is earned, but which make the interest the first lien thereon, are not mere promises to pay, for the breach of which an action at law is the only remedy, but necessarily imply an obligation on the part of the corporation to act in good faith in the production, protection and application of net earnings, which is fiduciary in its nature, and therefore of equitable cognizance; and, where there has been default in the payment of interest, holders of such bonds may maintain a suit in equity against the corporation for a disclosure and accounting in regard to the income earned, on allegation that it has been misappropriated. —MORSE v. BAY STATE GAS CO. OF DELAWARE, U. S. C. C., D. (Del.), 91 Fed. Rep. 938.

24. CORPORATIONS—Nuisance—Liability of Directors. —The directors of a corporation are personally liable for the death of one killed by the explosion of powder unlawfully kept in the corporation's warehouse, though they had no knowledge thereof, if, by exercising ordinary diligence as directors, they could have known that the warehouse contained an unlawful amount.—CAMERON v. KENYON-CONNELL COMMERCIAL CO., Mont., 56 Pac. Rep. 352.

25. CORPORATIONS—Sale of Assets.—A sale of all the property of a corporation, made by its president, will be sustained, though there is no record of any action by the stockholders or board of directors conferring authority, where the president had full control of the property and business of the company, under its by-laws, and was its chief managing officer, and the board of directors was informed of the proposition to purchase, and made no attempt to rescind the sale, but permitted the purchaser to enter into possession of the property.—NORTHWESTERN FUEL CO. v. EAU CLAIRE FUEL & SUPPLY CO., Wis., 78 N. W. Rep. 584.

26. CORPORATIONS—Suits by Stockholders—Grounds for Appointment of Receiver.—The fact that the officers and directors of a corporation have been guilty of participation in a wrongful abstraction of its property does not afford ground for the appointment of a receiver at suit of some of its stockholders, in order that such receiver may institute suit for the recovery of the property; but the rights of the corporation may be asserted and enforced in the suit by the stockholders themselves, by joining all the alleged wrongdoers with the corporation as defendants.—EDWARDS v. BAY STATE GAS CO. OF DELAWARE, U. S. C. C., D. (Del.), 91 Fed. Rep. 942.

27. COUNTIES—Formation of New County.—Where a new county is formed out of the territory of a county previously organized, the county boards of the two counties are authorized by § 16, ch. 18, art. 1, Comp. St. 1897, to meet and agree upon a division of the corporate property and of the corporate liabilities.—PERKINS COUNTY v. KEITH COUNTY, Neb., 78 N. W. Rep. 630.

28. COURTS—Adjournment.—Under Rev. St. § 2572, providing that no omission to adjourn from day to day, previous to final adjournment, shall vitiate any proceedings in such court, a failure to adjourn to a specific time does not end the term.—STATE v. MCBAIN, Wis., 78 N. W. Rep. 602.

29. CRIMINAL LAW—Conspiracy.—Where two or more persons conspire to do a criminal act, each is responsible for the act of the other in furtherance of the common purpose, if he is present, and if the act is done within the scope of the common purpose, but is not responsible for an act prompted by individual malice.—MCLEROY v. STATE, Ala., 25 South. Rep. 247.

30. CRIMINAL LAW—Impeachment of Witnesses.—A witness who, for the purpose of impeachment, has been asked whether he did not make certain contradictory statements to a certain person, which he denies, cannot be permitted to state what he did say to him where accused was not present, until the introduction of evidence that he did make the statements inquired about.—MARTIN v. STATE, Ala., 25 South. Rep. 255.

31. CRIMINAL PRACTICE — Larceny — Instructions.— While an instruction defining "larceny" is erroneous which omits to charge that the taking must be with a felonious intent, the instruction need not use the word "felonious," if words of equivalent import or meaning are employed.—PHILAMALEE v. STATE, Neb., 78 N. W. Rep. 625.

32. DEATH BY WRONGFUL ACT—Measure of Damages. —Under the statute of Kentucky (Ky. St. § 6) giving a right of action for death caused by the negligence or wrongful act of another to the personal representative of the person killed, and providing that the amount recovered shall be distributed among the kindred of the decedent in the order therein named, and in certain events shall become a part of his estate for the payment of debts, the measure of damages in such an action, as established by the State decisions, is the loss to the estate of the decedent caused by the destruction of his earning power, excluding the value of his life to any particular relative who is a beneficiary. —LINSS v. CHESAPEAKE & O. RY. CO., U. S. C. C., D. (Ky.), 91 Fed. Rep. 964.

33. DEEDS—Construction.—A conveyance in the ordinary form of a deed, except for a recital that it is to take effect and be in full force after the death of the grantor, is a deed, and not a testamentary disposition of land.—KELLEY v. SHIMER, Ind., 53 N. E. Rep. 233.

34. DEED—Delivery.—Before a deed can operate as a valid transfer of title, there must be a delivery of the instrument which becomes effective during the life of the grantor.—WEUSTER v. FOLIN, Kan., 56 Pac. Rep. 490.

35. DEEDS—Heirs—Descent.—In the absence of other words in a conveyance showing that grantees were to take by purchase under a grant to one and the heirs of his body, such heirs do not take jointly with the ancestor, but by descent.—WILSON v. ALSTON, Ala., 25 South. Rep. 225.

36. DEEDS—Life Estate—Equitable Fees.—A conveyance was in trust for the sole use and benefit of the beneficiary for life, with power to sell through her trustee, should she desire, and after death to be conveyed to her surviving children. Held, that the beneficiary took an equitable fee, which passed to her heirs at law.—DAVIS v. HEPPERT, Va., 32 S. E. Rep. 467.

37. FEDERAL COURTS — Jurisdiction — International Comity.—The right of an employee of a railroad company, injured in the republic of Mexico by the negligence of the company, to recover in a civil action damages for such injury, under the law of that republic, may be enforced in a federal court in the State of Texas, having jurisdiction of the parties and of the subject-matter; that law being neither so vague and uncertain, nor so dissimilar to the law of the State of Texas, as to prevent it from being so enforced.—MEXICAN CENT. RY. CO. v. MARSHALL, U. S. C. C. of App., Fifth Circuit, 91 Fed. Rep. 933.

38. FIXTURES—Evidence.—Where it is conceded that a house was built as a permanent residence for the owner, evidence that his wife filed a declaration that it was her homestead is immaterial on the issue whether a bathtub, a heater and certain mantels therein were fixtures, since it does not tend to prove the intention with which they were affixed.—PHILADELPHIA MORTGAGE & TRUST CO. v. MILLER, Wash., 56 Pac. Rep. 382.

39. FRAUDS, STATUTE OF — Vendor and Purchaser.— One to whom a loan is made in consideration of a promise to secure it by a conveyance of real property is, on his refusal to make the conveyance, liable for the amount of the loan as for money had and received, though the promise was void under the statute of

frauds.—WHYTE v. ROSENCRANTZ, Cal., 56 Pac. Rep. 436.

40. FRAUDULENT CONVEYANCES — Validity in Part.—Under Gen. St. § 1526, providing that all fraudulent conveyances shall be void, where a mortgage is void because of the fraudulent intent on both parties it cannot be supported as against the creditors in favor of the fraudulent mortgagee, even to the extent of an actual *bona fide* debt owing by the mortgagor.—LIVINGSTON v. SWOFFORD BROS. DRY-GOODS CO., Colo., 56 Pac. Rep. 355.

41. GARNISHMENT—Residence of Garnishee.—Where a railroad company is operating its line in the State, it is subject to garnishment, though the debt due to defendant may have been created in another State, and he may have been a non-resident at the date of the service of the garnishment.—GEORGIA & A. RY. CO. v. STOLLENWERCK, Ala., 25 South. Rep. 258.

42. GARNISHMENT—Writs of Error.—A proceeding by garnishment to reach non-leviable assets formerly reached by a creditors' bill is an equitable proceeding, and hence not reviewable on a writ of error.—FARMERS' FIRE INS. CO. v. CONRAD, Wis., 78 N. W. Rep. 582.

43. HABEAS CORPUS—When Writ Granted.—When the petitioner is imprisoned on a bench warrant issued upon an information irregular upon its face, but which charges a public offense within the jurisdiction of the trial court, the writ of *habeas corpus* does not lie, as such writ cannot be substituted for a writ of error.—IN RE MARSHALL, Idaho, 56 Pac. Rep. 470.

44. HOMESTEAD—Claim—Right to Mortgage.—Rev. St. U. S. § 2296, providing that lands acquired for a homestead should not become liable for a debt contracted prior to issuing a patent therefor, does not prevent an occupant from giving a valid mortgage thereon before obtaining a patent.—MEINHOLD v. WALTERS, Wis., 78 N. W. Rep. 574.

45. HOMESTEAD—Head of Family.—The exemption of a homestead to the head of a family, allowed by the constitution, applies to one who devotes his entire earnings and rents from real estate to the support of himself and widowed mother.—SCOTT v. MOSELY, S. Car., 32 S. E. Rep. 450.

46. HUSBAND AND WIFE — Conveyances.—A deed by a husband to a trustee for the benefit of his wife and children, which expressly gives the wife absolute power to sell or exchange the land by the trustee's uniting in the conveyance, vests in the wife the entire interest, to the exclusion of the children.—JONES v. JONES' EXR., Va., 32 S. E. Rep. 463.

47. HUSBAND AND WIFE—Separation — Agreement.—While separation between husband and wife in pursuance of mutual articles of agreement will not be enforced by the decree of a court of equity, because against the policy of our laws, yet the court will not suffer a husband who has become possessed of the property of his wife by virtue of such agreement to avail himself of his own wrong in order to free himself from the duty to maintain his wife.—BUTTLAR v. BUTTLAR, N. J., 42 Atl. Rep. 755.

48. INJUNCTIONS AGAINST ACTIONS AT LAW.—Where stock certificates were placed in trust by complainant and another, to be delivered to a third person on their joint request, and the trustee refuses to deliver them without the consent of both, complainant cannot enjoin the third person from suing for the stock at law, since the defense at law is perfect.—RUCKER v. MORGAN, Ala., 25 South. Rep. 242.

49. INSURANCE — Policy — Title of Insured.—Insured was in possession of property under an agreement that upon the payment of a certain sum his conditional fee should become absolute, and the deed was in escrow, for delivery on the performance of the condition. Held, that insured was the sole and unconditional owner, within the meaning of a policy providing that it should be void if the interest of insured was not sole and unconditional.—DAVIS v. PIONEER FURNITURE CO., Wis., 78 N. W. Rep. 596.

50. INSURANCE—Reformation of Policy.—An indorsement on a policy made by the insurer's agent with its authority, reciting that it was issued by error to the person named therein as the insured, and declaring that it was made payable to another, who was the owner of the property, to whom the policy was delivered, and whom it was intended to insure, effects a reformation of the policy, so that an action may be maintained thereon without an assignment or reformation thereof.—FIREMAN'S FUND INS. CO. OF SAN FRANCISCO, CAL., v. DUNN, Ind., 53 N. E. Rep. 251.

51. INSURANCE — Waiver of Conditions.—An insurer does not waive a condition of a policy by adjusting the loss after insured has stipulated in his proof of loss that such adjustment shall not be considered a waiver of any of insurer's rights.—JOYE v. SOUTH CAROLINA MUT. INS. CO., S. Car., 32 S. E. Rep. 446.

52. INTOXICATING LIQUORS — Prohibition.—One who receives apples, to be distilled into brandy on shares, does not, by delivering to the original owner his portion of the product, violate a law prohibiting the sale, gift, or other disposition of intoxicants.—MAXWELL v. STATE, Ala., 25 South. Rep. 235.

53. LANDLORD AND TENANT — Effect of Ejectment as Eviction.—The bringing of ejectment by a lessor against a lessee does not amount to an eviction, relieving the latter from the obligation to pay rent, where the lessor had advised tenants of the property to continue to pay rent, pending the suit, to their landlord, who was a sublessee, and who, although he refused to pay rent to the lessee, on account of said suit, had given security for such rent.—AGAR v. WINSLOW, Cal., 56 Pac. Rep. 422.

54. LANDLORD AND TENANT — Renewal of Lease.—When a demise of lands is made for the term of one year, with the privilege of four more years from a fixed date, the lessee has the option to extend the term for the additional period of four years, if he shall so elect, but not for a shorter period.—MERSHON v. WILLIAMS, N. J., 42 Atl. Rep. 778.

55. LIFE INSURANCE — Fraud.—Assured applied for a life policy for the benefit of his estate, and afterwards assigned it to his employer, who, with others, had encouraged him to take it out. There was no evidence of an agreement to assign at any time prior to the assignment, though the assignee advanced the premium. Held that, though the policy be void as against the assignee by reason of his procuring the death of assured, it was not shown to be void in its inception, as against the estate.—NEW YORK LIFE INS. CO. v. DAVIS, Va., 32 S. E. Rep. 475.

56. LIMITATIONS—Contract of Guaranty.—The statute of limitation begins to run against a contract of guaranty the same moment an action accrues thereon.—CUMMINS v. TIBBETTS, Neb., 78 N. W. Rep. 617.

57. JUDGMENTS—Negligence of Attorney.—The negligence of the counsel for the defeated party in an action at law, in failing to call up a motion for a new trial, though arising from the mistaken impression that such motion had been overruled, where no fraud or unfairness was shown, is no ground for granting relief in equity by ordering a new trial or giving the right to appeal as if the motion had been overruled.—SCROGGIN v. HAMMETT GROCER CO., Ark., 49 S. W. Rep. 820.

58. JUDGMENT — Vacation — Fraud or Collusion.—A surety on an appeal bond is not entitled to open a judgment against his principal, entered without fraud or collusion, where his principal has no such right.—INGERSOLL v. SEATOFT, Wis., 78 N. W. Rep. 576.

59. JUDGMENT BY CONFESSION — Conflict of Laws.—A judgment by confession entered in one State is entitled to the same faith and credit in a sister State as any other judgment.—VAN NORMAN v. GORDON, Mass., 53 N. E. Rep. 267.

60. MANDAMUS—Execution Sales.—*Mandamus* does not lie to compel a sheriff to sell real estate levied upon by him under an execution issued upon an ordinary

money judgment, as in such case the relator has other adequate remedies at law against the sheriff for his neglect of duty.—STATE v. CONE, Fla., 25 South. Rep. 279.

61. MANDAMUS TO JUDGE — Supersedeas Bond.—*Mandamus* will not lie to control the discretion of a judge, as by requiring him to allow a *supersedeas* in a case where such allowance rests in his discretion. *Mandamus* will, however, lie to compel a judge to fix the amount of a *supersedeas* bond, where the statute gives an absolute right to a *supersedeas*.—STATE v. FAWCETT, Neb., 78 N. W. Rep. 636.

62. MASTER AND SERVANT — Assumption of Risk.—An employee assumes a risk of such dangers attending the prosecution of his work as he would discover by the exercise of ordinary care for his personal safety, and for hurt happening to him from those dangers the employer is not responsible.—BENJAMIN ATHA & ILLINGWORTH CO. v. COSTELLO, N. J., 42 Atl. Rep. 766.

63. MASTER AND SERVANT — Breach of Employment—Contract.—Though one of two joint employers could not terminate a contract of employment, yet he could break it by forbidding the employee to work, in which case the latter's remedy is for damages for loss of opportunity to work, measured by what could reasonably be considered to have been contemplated by the parties contracting as the probable result of its breach, and not for wages earned.—KENNEDY v. SOUTH SHORE LUMBER CO., Wis., 78 N. W. Rep. 567.

64. MASTER AND SERVANT—Dangerous Premises—Negligence.—The rule of duty for a master to use reasonable care that the place of working of his servants shall be kept safe is not fully applicable in a case where the work itself involves the place of working. In such a case the duty extends only to the use of reasonable care to discover and give notice of latent danger.—CURLEY v. HOFF, N. J., 42 Atl. Rep. 731.

65. MASTER AND SERVANT — Negligence—Assumption of Risk.—The general rule concerning the assumption by a servant of an extra hazard may be varied by the facts of circumstances of the particular case, and no fixed rule can be laid down to determine what act of the servant would constitute contributory negligence.—FRANK v. BULLION BECK & CHAMPION MIN. CO., Utah, 56 Pac. Rep. 419.

66. MASTER AND SERVANT — Proximate Cause — Assumption of Risks.—Where, in a sawmill, an employee whose duty was to remove the materials from a roller bench on which such materials were carried from the place where the logs were sawed was furnished with a short iron tool with a hook end, the employer is not liable for injuries resulting from the fact that the hook was too short, or was straight instead of curved, or was too blunt, the employee being conclusively presumed to have assumed the danger of the use of such hook.—OLSON v. DOHERTY LUMBER CO., Wis., 78 N. W. Rep. 572.

67. MECHANICS' LIENS—Priority — Estoppel.—A contract for the sale of land provided for the forfeiture of all improvements if final payment was not made as stipulated, and that, on default of an installment, the vendor could declare a forfeiture. After a default, the vendee leased the land, and the lessee, being in open possession, constructed a building thereon, persons furnishing material and filing claims therefor on the belief that the lessee owned the building. The vendor, with full knowledge, allowed the materials to be furnished without giving any notice of his rights. Held, that the vendor was estopped to claim a forfeiture, and prevent the lien claimants from having the property removed and sold to satisfy their liens, as allowed by statute.—BELL v. GROVES, Wash., 56 Pac. Rep. 401.

68. MORTGAGE — Default in Interest.—When a mortgage to secure the payment of the principal of certain bonds at a specified day, and the interest thereon according to the provisions of coupons attached to the bonds, contains a covenant that at a fixed time after default in the payment of interest, and after demand, the principal shall become immediately due, and the bonds and coupons are payable at a designated place, default in the payment of interest, within the meaning of that covenant, will result from the non-payment of the coupons, although not presented at the designated place, and payment demanded.—NEW JERSEY PAPER-BOARD & WALL-PAPER MFG. CO. v. SECURITY TRUST & SAFE-DEPOSIT CO., N. J., 42 Atl. Rep. 746.

69. MORTGAGE—Foreign Corporations.—As against a mortgagor's creditors, who obtained no lien prior to a foreclosure sale to the mortgagee, but who attached before the recording of the sheriff's deed, the decree of foreclosure is not void on the ground that the mortgagee was a foreign corporation, and did not comply with the State laws governing such corporations.—MILLER v. GATES, Mont., 56 Pac. Rep. 356.

70. MORTGAGES—Priorities—Release—Assignment.—A first mortgagee, with notice that there was a subsequent mortgage on part of the same premises, released that part of the mortgaged premises not covered by the subsequent mortgage. At the time the release was executed the then holder of the second mortgage agreed in writing with the first mortgagee that he should give the release, and stipulated that the first mortgage should be first paid out of the unreleased part of the mortgaged premises. After this agreement and release, the holder of the second mortgage assigned it to Davis, who had no notice of the agreement made by his assignor. Held, that the lien of the first mortgage upon the unreleased lands was unimpaired by the release, and that it is entitled to priority of payment over the second mortgage.—CRESSMAN v. DAVIS, N. J., 42 Atl. Rep. 768.

71. MUNICIPAL CORPORATION — Peddlers — Itinerant Merchants.—One who delivers an article already sold, and collects the price, or who sells articles without traveling about, is not a "peddler or itinerant merchant."—CITY OF GREENSBORO v. WILLIAMS, N. Car., 32 S. E. Rep. 492.

72. MUNICIPAL CORPORATIONS — Power of Removal—Mandamus.—Where the legality of a removal from a public office a disputed question, depending on the construction of statutory provisions, *mandamus* is not the proper remedy to restore the person removed to such office.—KIMBALL v. OLMSTED, Wash., 56 Pac. Rep. 377.

73. MUNICIPAL CORPORATIONS — Warrants — Limitations.—Limitations do not begin to run against the city warrant until there is money in the treasury applicable to its payment, and the holder of the warrant has such notice as would enable him to present it for payment.—POTTER v. CITY OF NEW WHATCOM, Wash., 56 Pac. Rep. 394.

74. NEGLIGENCE — Electricity.—The plaintiff picked up a wire that was lying in a public highway, and was injured by an electric current. He brought suit against the telephone company, whose wire it was, and against the trolley company, whose current, it was contended, did the harm. Held, that the question whether the linemen of the telephone company had been reasonably diligent in discovering the fallen wire, and in preventing probable injury, was properly left to the jury.—NEW YORK & N. J. TEL. CO. v. BENNETT, N. J., 42 Atl. Rep. 759.

75. PARTNERSHIP — Action against Co-partner.—A partner cannot maintain an action for a money judgment against a co-partner, upon a claim of payment of a partnership debt, before a final accounting of partnership affairs has been had, except upon showing that that particular transaction had, by agreement, been withdrawn from the partnership account. And, in the absence of such showing, it is a defense which will bar a recovery to show that the partnership has not been dissolved, and that no final accounting of the partnership affairs has been had.—KUNNEKE v. MAPEL, Ohio, 53 N. E. Rep. 259.

76. PARTNERSHIP—Action between Partners.—An action by one partner, or, upon his death, by his representative or heirs, against a co-partner, for contribu-

tion, cannot be maintained until after an accounting or settlement of the affairs of the firm has been had, and a balance found due in favor of the partner asserting the claim, his representative or heirs.—PALM v. POPONOE, Kan., 56 Pac. Rep. 486.

77. PARTNERSHIP—Death of Partner.—A partnership contract treated the property as the active partner's, the dormant partner being secured a share of the net profits; and neither was to sell the stock without consent of the other. On the death of the active partner, his administrators assumed control, and continued the business in the name of the estate, with the knowledge and consent of the dormant partner, who asserted no control as survivor. Held, that he was not liable for losses occurring thereafter.—STUBBINGS v. O'CONNOR, Wis., 78 N. W. Rep. 577.

78. PARTNERSHIP.—Where several parties unite in the purchase of real estate, not as a permanent investment, but as a speculation, and with a view of selling the same for profit, and there is community of ownership of the property, community of power in carrying on the enterprise, and community of interest in the profits and losses arising from the same, it will ordinarily be treated as a partnership.—JONES v. DAVIES, Kan., 56 Pac. Rep. 484.

79. PAYMENT—Evidence.—Where, in an action on an account, payment is pleaded, it is proper to instruct the jury that they may consider evidence in regard to prior related transactions between the parties, to aid them in determining whether the plea is sustained.—OTTENS v. FRED KRUG BREWING CO., Neb., 78 N. W. Rep. 622.

80. PRINCIPAL AND AGENT—Factors.—Keepers of a tobacco salesroom received a consignment of tobacco for sale, and sold it at public auction, subject to the consignor's right to reject the bid, and then delivered it to the buyer, collecting the price, and paying it to the consignor. Their compensation was a commission on the sale. Held, that the salesroom keepers were agents of the consignor.—WHITE v. BOYD, N. Car., 32 S. E. Rep. 495.

81. PRINCIPAL AND AGENT—Knowledge of Agent—Notice to Principal.—The rule whereby an agent's knowledge is imputed to his principal is subject to an exception in the case of an agent who is engaged in an independent fraudulent scheme without the scope of the agency.—HOUGHTON v. TODD, Neb., 78 N. W. Rep. 634.

82. PRINCIPAL AND AGENT—Loan to Agent—Liability of Principal.—In an action to recover money loaned to defendant's agent for use in defendant's business, where there has been no ratification, no recovery can be had on a special verdict which merely finds that the agent had authority to make the loan, and that plaintiff believed him to have such authority, because such verdict leaves it uncertain whether the agent's authority was real or only apparent; and, if it was the latter, plaintiff was not justified in relying thereon, unless, in the exercise of reasonable prudence, he was justified in believing that the agent had such authority.—MCDERMOTT v. JACKSON, Wis., 78 N. W. Rep. 598.

83. RAILROAD COMPANY—Contributory Negligence.—Plaintiff was struck by a train while walking in the dark over a crossing near which he had lived for some time, and with which he was familiar. The crossing was protected by gates, but their operation was regularly stopped some time earlier in the evening. His view in the direction of the approaching train was obstructed by cars on side tracks which he had to cross before reaching the track on which the accident happened, the one nearest to it being eight feet away. After crossing this last side track, he had an unobstructed view for 1,600 feet. The locomotive approached the crossing with its headlight lit and bell ringing. Held, that plaintiff was guilty of contributory negligence.—WHITE v. CHICAGO & N. W. RY. CO., Wis., 78 N. W. Rep. 585.

84. RAILROAD COMPANY—Ejection of Trespasser.—The inference of implied authority arising from the brakeman's employment, from his custody of the company's property, and from the duty owed to the master in respect to the train, will not be overcome by proof that the instructions of the company to its servants expressly required freight conductors not to permit unauthorized persons to ride upon freight trains.—WELSH v. WEST JERSEY & S. R. CO., N. J., 42 Atl. Rep. 786.

85. RAILROAD COMPANY—Negligence.—Where an engineer discovers a child in peril in time to avoid injuring it by the exercise of reasonable diligence, and consciously fails to exercise such diligence, such failure is wanton negligence; and the company is liable, though the child is negligent.—ALABAMA G. S. R. CO. v. BURGESS, Ala., 25 South. Rep. 251.

86. RAILROAD CROSSINGS — Negligence. — Railroad companies must know the requirements of harvesting machines in general use throughout the State, as to the width of highway crossings necessary to enable persons to drive them safely over, and a failure to provide suitable crossings for such machines, whereby injuries occur, is negligence.—ATCHISON, T. & S. F. R. CO. v. HENRY, Kan., 56 Pac. Rep. 486.

87. REMOVAL OF CAUSES—Bond.—It is not necessary that the residence and sufficiency of the surety on the removal bond should appear in the record, in order to sustain the jurisdiction of the federal court. In the absence of anything to show that the surety was a resident of the State in which the suit was pending, or of any action by the State court accepting or refusing to accept him as surety, the statement of the petition for removal that the petitioners "have made and herewith file a bond with good and sufficient surety" must be accepted as true, until the contrary is shown.—PROBST v. COWEN, U. S. C. C., S. D. (Ohio), 91 Fed. Rep. 929.

88. REMOVAL OF CAUSES TO FEDERAL COURT.—Where a case that may be is duly removed from a State to a federal court, the jurisdiction of the State court over the cause at once ceases, and it can take no further step therein; and if thereafter the case is disposed of in the federal court, otherwise than on the merits, the plaintiff cannot recommence the action in the State court, although, under like circumstances, he might have done so had the cause not been removed.—BALTIMORE & O. R. CO. v. FULTON, Ohio, 53 N. E. Rep. 265.

89. SALES—Delivery—Acceptance.—One agreeing to buy a heater of a kind described, to be delivered free on board cars, to be "accepted, with the understanding that the heater is (the seller's) property until accepted and paid for," may reject any heater after such delivery.—COLLES v. LAKE CITIES ELECTRIC RY. CO., Ind., 53 N. E. Rep. 256.

90. SALES—Parol Contract—Statute of Frauds.—No recovery can be had on a contract for the sale of goods, within the statute of frauds (Civ. Code, § 1739), which is not in writing, in absence of clear and unequivocal proof of acceptance and receipt by the buyer.—DAUPHINY v. RED POLL CREAMERY CO., Cal., 56 Pac. Rep. 451.

91. SEDUCTION—Enticing Servant — Declaration.—A count for enticing away a servant from the master's service, will not disclose a good cause of action unless it shows that the defendant had knowledge that the relation of master and servant existed.—CLARK v. CLARK, N. J., 42 Atl. Rep. 770.

92. SLANDER — Presumptions. — In an action for slander, the words spoken are presumed to have been spoken in the English language, unless the contrary is made to appear; and, if spoken in a foreign tongue, there can be no recovery, unless the words are set out in the tongue in which they were spoken, followed by a translation into English.—HEENEY v. KILBANE, Ohio, 53 N. E. Rep. 262.

93. SPECIFIC PERFORMANCE—Guaranty of Title—Time for Performance.—A party to a contract for the ex-

change of land, who guaranties his title to be good, has a reasonable time in which to perfect it if it is found defective.—ALLSTEAD v. NICOL, Cal., 56 Pac. Rep. 452.

94. TAXATION—Enforcement.—When the law imposing a tax provides a special remedy for enforcing it, the method so provided is generally exclusive; and, if the only method adopted be illegal, the courts cannot substitute a different and legal method.—CITY OF OMAHA v. HARMON, Neb., 78 N. W. Rep. 622.

95. TELEGRAPH COMPANY — Negligence—Damages.—Where, owing to a telegraph company's negligence in transmitting a message to the sender's brokers to buy cotton, they failed to buy, the sender was not bound to purchase the next day, to prevent or lessen his loss. —WESTERN UNION TEL. CO. v. CHAMBLEE, Ala., 25 South. Rep. 232.

96. TRESPASS—Damages.—The building of a levee on the land of another without his consent, by which it is claimed his land was made unfit for cultivation, will subject the party constructing the levee to the damages; but he will not be responsible for damages caused by the cutting of the levee by a mob, the law excluding such damages, under the rule that the party who commits the wrong cannot be held for what the law deems remote damages.—BENTLEY v. FISCHER LUMBER & MANUFACTURING CO., La., 25 South. Rep. 262.

97. TRESPASS—Injury to Sewer.—One having a parol license to maintain a sewer from his land across that of an adjoining owner may have an action for damages against a stranger who destroys or injures the sewer.—MILLER v. INHABITANTS OF GREENWICH TP., N. J., 42 Atl. Rep. 735.

98. TRIAL BY JURY—Special Legislation.—The right of trial by jury is a subject-matter of general legislation, and laws affecting it must be uniform in operation throughout the State. Const. art. 2, § 26.—SILBERMAN v. HAY, Ohio, 53 N. E. Rep. 258.

99. TRIAL—Jury Trial—Specific Performance.—Where the complaint is one for specific performance of an agreement to convey lands to a trustee as security, or in lieu thereof to pay their value to the trustee for security, and the answer does not allege any inability to perform, or that plaintiff has an adequate legal remedy, there being no other proof, a jury trial is properly denied.—O'BEIRNE v. BULLIS, N. Y., 53 N. E. Rep. 211.

100. TRIAL—Special Verdict—Sufficiency.—A royalty for the use of a patented device cannot be recovered on a special finding that its use was worth a certain sum, but that such sum was not due from the user of the device to the owner of the patent.—HABERKORN v. FT. WAYNE, C. & L. R. CO., Ind., 53 N. E. Rep. 254.

101. TRUST—Following Trust Funds—Preferences.—A trust creditor is not entitled to a preference over other creditors, unless he shows that the fund or property of the debtor which he seeks to affect with such preference includes the trust property or its proceeds.—SHUTE v. HINMAN, Oreg., 56 Pac. Rep. 412.

102. TRUSTS FOR CREDITORS—Knowledge of Trustee. —Though trustees in a deed of trust to secure creditors did not know of the debtor's intention to execute the deed, nor of its recordation, until afterwards, their knowledge of a prior unrecorded conveyance binds the beneficiaries.—MERCHANTS' BANK OF DANVILLE v. BALLOU, Va., 32 S. E. Rep. 481.

103. VENDOR AND PURCHASER—Notice of Fraud.—In an action to set aside a deed for fraud, a finding that the grantees, at the execution of a deed, had notice of facts putting them on inquiry, which would have led them to discover the fraud of their grantor in obtaining his title, is an inference of fact from the evidence adduced, denying grantees relief as innocent purchasers.—BANDELL v. JELLEFF, Wis., 78 N. W. Rep. 565.

104. VENDOR'S LIEN—Privilege of State and Parish.—One selling real property on terms of credit, and retaining a vendor's lien and mortgage on the property sold as security for the purchase price, subsequent to the passage of the license statute of 1894, conferring a first lien and privilege on all property, real and personal, of the license debtor, in favor of the State and parish, must be presumed to have possessed full knowledge thereof, and made the sale subject to the contingency that said privilege of the State and parish might prime his mortgage and vendor's lien on the proceeds of its sale.—FRAZEE v. DUPRE, La., 25 South. Rep. 260.

105. WASTE—Rights of Life Tenant. — Under Gen. Laws, ch. 268, providing that a life tenant who shall commit or suffer waste on the estate shall forfeit the place wasted, and double the amount of the waste, to the remainder-man, the life tenant is not responsible for loss by accidental fires.—SAMPSON v. GROGAN, R. I., 42 Atl. Rep. 712.

106. WATERS—Pollution of Rivers — City Sewage.—Pollution of a river by the discharge of city sewage gathered from a large area, and caused to flow into the stream by artificially constructed grades, cannot be justified as a natural and reasonable use of the river. —GREY v. MAYOR, ETC., OF CITY OF PATERSON, N. J., 42 Atl. Rep. 748.

107. WILLS—Charge on Land.—Under a will devising all plaintiff's property to his grandson, and stating that it is testator's desire that the grandson shall take charge of his grandmother, his mother and his sisters during their lifetime, no charge on the land for the support of such persons was intended.—PERDUE v. PERDUE, N. Car., 32 S. E. Rep. 492.

108. WILLS —Construction. — A will declaring that testator's undivided share in partnership land was realty thereby fixes the character of such property as against the beneficiaries, though otherwise such land would be treated as personalty.—TODD v. MCFALL, Va., 32 S. E. Rep. 472.

109. WILLS—Devise—Legacies.—The amount of personalty owned by testatrix, and the amount of its proceeds at executor's sale, may be considered in determining whether a legacy was charged on real estate.— LORD v. SIMONSON, N. J., 42 Atl. Rep. 741.

110. WILLS—Estates—Persons not in Esse.—Where a testator bequeaths land to his daughter for life, and then to her children, the court has power, on application of the daughter and all her children then living, to order a sale of the estate, since after-born children will be concluded by such sale by representation of those then living.—EX PARTE YANCEY, N. Car., 32 S. E. Rep. 491.

111. WILLS—Residuary Devises.—A will directing the executor to distribute the residue of the estate "under the intestate laws of Pennsylvania," is an immediate gift of such residuary estate.—IN RE MCGOVRAN'S ESTATE, Penn., 42 Atl. Rep. 705.

112. WILLS—Latent Ambiguity.—Where a will offered for probate declares that it is a codicil to a will previously executed, extrinsic evidence is admissible to show that the former will was destroyed, and that the alleged codicil was a copy of the same, with such additions as testator desired to make to such original will.—WHITEMAN v. WHITEMAN, Ind., 53 N. E. Rep. 225.

113. WILLS—Validity—Conflict of Laws.—The validity of a residuary clause in the will of one domiciled in Pennsylvania, whereby he made a bequest to a city of Virginia for the purpose of establishing schools for the poor, is to be determined by the law of Pennsylvania, in respect, at least, to all real and personal estate situated in the State.—HANDLEY v. PALMER, U. S. C. C., W. D. (Penn.), 91 Fed. Rep. 948.

114. WILLS—Vested Remainder.—A testator devised personalty to his daughter for life, providing that on her death it should "pass and belong absolutely to (her children), and to their respective children, and to the descendants or descendant of any that may have died leaving issue; such to take what its deceased parent would have taken, if alive." Held, that the remainder vested at the testator's death. MCCOMB v. MCCOMB, Va., 32 S. E. Rep. 453.